

No. 13440

United States
Court of Appeals
for the Ninth Circuit.

CALIFORNIA BY-PRODUCTS CORPORATION,
E. F. HAVEN, ARMAND J. PIHL-
BLAD and SONNET SUPPLY CO.,
Appellants,

vs.

FRANK M. CHICHESTER, Trustee in Bank-
ruptcy of the Estate of Superior Casting
Company, Inc., Bankrupt; BILL LEPPER
MOTORS, INC., and CONSOLIDATED
CASTING CO.,
Appellees.

Transcript of Record

Appeal from the United States District Court
Southern District of California,
Central Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellants:

DANIEL W. GAGE,
RUSSELL B. SEYMOUR,
1120 Rowan Bldg.,
458 S. Spring St.,
Los Angeles 13, Calif.

For Appellee Frank M. Chichester, Trustee, etc.:

ERLICH & BLONDER,
608 S. Hill St.,
Los Angeles 14, Calif.

For Appellee Bill Lepper Motors, Inc.:

ROBERT H. SHUTAN,
333 S. Beverly Dr.,
Beverly Hills, Calif.

For Appellee Consolidated Casting Co.:

JAMES T. BYRNE,
214 Rowan Bldg.,
Los Angeles 13, Calif.

In the District Court of the United States, Southern
District of California, Central Division

In Bankruptcy—No. 51460

In the Matter of
SUPERIOR CASTING COMPANY, INC.,
a California Corporation,

Alleged Bankrupt.

CREDITORS' PETITION

To the Honorable the Judges of the District Court
of the United States, in and for the Southern
District of California, Central Division:

The petition of the undersigned creditors of the
above named Superior Casting Company, Inc., a
California corporation, sometimes hereinafter known
as the alleged bankrupt, respectfully shows:

I.

That at all times herein mentioned the said alleged
bankrupt has been and now is a California corpo-
ration with its residence, domicile and principal
place of business in this District at 1601 East El
Segundo Boulevard, El Segundo, California, Los
Angeles County; that it has had its residence, domi-
cile and principal place of business as aforesaid for
all of the six months next immediately preceding
the filing of this petition. [2*]

*Page numbering appearing at foot of page of original Certified
Transcript of Record.

II.

That said alleged bankrupt at all times mentioned has been engaged in mercantile and commercial pursuits, to wit: casting business, and is not, nor has it ever been, a banking, railroad, insurance or municipal corporation, or a building and loan association or a farmer or engaged in the tillage of the soil.

III.

That said alleged bankrupt owes debts in excess of the sum of \$1000.00.

IV.

That at all times herein mentioned said alleged bankrupt has been and now is insolvent in that the reasonable value of all of its assets is less than the indebtedness owing by said alleged bankrupt.

V.

That the claims of the petitioners, and each of them, are liquidated as to amount and fixed as to liability, and none of the petitioners has any security for any of the claims herein asserted.

VI.

That the claims of the petitioners are each for goods, wares, and merchandise sold and delivered and labor performed within two years last past to the alleged bankrupt at its special instance and request, of the reasonable value of the amount set forth opposite the signature of each petitioner, no part of which has been paid, and all of which is now due, owing and unpaid.

VII.

That the alleged bankrupt within four months immediately preceding the filing of this petition committed an act of bankruptcy in that it paid to The Pacific Telephone & Telegraph Co., who was then and there an unsecured creditor of the alleged bankrupt and of the same class as the petitioners, the sum of \$164.77 with intent to [3] prefer said creditor and did prefer said creditor over and above other creditors of the same class including the petitioners; and for a second and further act of bankruptcy petitioners allege that within four months next immediately preceding the filing of this petition the alleged bankrupt paid to one or more unsecured creditors, whose true names are now unknown to the petitioners, certain moneys the exact amount of which is not now known to the petitioners, with intent to prefer and did prefer said creditors and each of them over and above other creditors of the same class, including the petitioners; and for a third and further act of bankruptcy, petitioners allege that during the month of November, 1950, the alleged bankrupt transferred or permitted to be transferred substantially all of its assets consisting generally of land, buildings and equipment, located at 1601 East El Segundo Boulevard, El Segundo, California, of the reasonable value of \$95,000.00 to Lepper Motors, Inc., in consideration of an asserted claim approximating \$60,000.00 with the intent to hinder or delay the creditors of said alleged bankrupt.

Wherefore, petitioners pray that said alleged

bankrupt be adjudged a bankrupt within the meaning and purview of the Bankruptcy Act, and for such other and further relief as may be proper.

ARMAND J. PIHLBLAD,

/s/ ARMAND J. PIHLBLAD,

With an unsecured claim in the amount of about \$2,550.00.

SONNET SUPPLY COMPANY,

By MERLE HILLIARD,
Secretary-Treasurer,

/s/ MERLE HILLIARD,

With an unsecured claim in the amount of about \$273.65.

E. F. HAVEN, d.b.a. E. F.
HAVEN & ASSOCIATES,

By E. F. HAVEN,

/s/ E. F. HAVEN,

With an unsecured claim in the amount of about \$496.21.

/s/ RUSSELL B. SEYMOUR,
Attorney for Pet. Creditors.

Duly verified.

[Endorsed]: Filed February 19, 1951. [4]

[Title of District Court and Cause.]

ORDER OF GENERAL REFERENCE

At Los Angeles, California, in said district on the 19th day of February, 1951;

Whereas, a petition was filed in this court on the 19th day of February, 1951, against Superior Casting Company, Inc., a California Corporation, alleged bankrupt above named, praying that it be adjudged a bankrupt under the Act of Congress relating to bankruptcy, and good cause now appearing therefor;

It is ordered that the above-entitled proceeding be, and it hereby is, referred to Reuben G. Hunt, Esq., one of the referees in bankruptcy of this court, to take such further proceedings therein as are required and permitted by said Act, and that the said Superior Casting Company, Inc., a California Corporation, shall henceforth attend before said referee and submit to such orders as may be made by him or by a judge of this court relating to said bankruptcy.

W. M. BYRNE,
District Judge.

[Endorsed]: Filed February 19, 1951. [6]

[Title of District Court and Cause.]

ADJUDICATION OF BANKRUPTCY AND
ORDER TO FILE SCHEDULES

At Los Angeles, California, in said District, on the 13th day of April, 1951.

The petition of Armand J. Pihlblad, Sonnet Supply Co., and E. F. Haven, doing business as E. F. Haven & Associates, filed on the 19th day of February, 1951, that Superior Casting Company, Inc., a California corporation, be adjudged a bankrupt under the Act of Congress relating to bankruptcy, the answer thereto filed by the above-named bankrupt, the request for admission of facts under Rule 36 of the Federal Rules of Civil Procedure, the purported answer thereto filed by the alleged bankrupt, and the motion and notice of motion for summary judgment under Rule 56 of Federal Rules of Civil Procedure, all having been considered by the Court at the hearing had on April 12, 1951, after notice, and it appearing therefrom that the allegations contained in said creditors' petition are true, and no appearance having been made by or for the said [7] alleged bankrupt, now, therefore,

It Is Adjudged that the said Superior Casting Company, Inc., a California corporation, is a bankrupt under the Act of Congress relating to bankruptcy.

It Is Further Ordered that said Superior Casting Company, Inc., a California corporation, bankrupt herein, prepare and file herein within five days from the date hereof Schedules and Statement of Affairs

in triplicate, pursuant to Section 7 of the Bankruptcy Act.

/s/ REUBEN G. HUNT,
Referee in Bankruptcy.

Affidavit of service by mail attached.

[Endorsed]: Filed April 13, 1951, Referee.

[Endorsed]: Filed April 13, 1951, U.S.D.C. [8]

[Title of District Court and Cause.]

BOND OF FRANK M. CHICHESTER

Know All Men By These Presents:

That we, Frank M. Chichester, of 846 Rowan Building, Los Angeles 14, California, as Principal, and the Fidelity and Deposit Company of Maryland, a corporation duly incorporated under the laws of the State of Maryland, and authorized to act as Surety under the act of Congress approved August 13, 1894, whose principal office is located in Baltimore, State of Maryland, as Surety, are held and firmly bound unto the United States of America in the sum of One Thousand and No/100 Dollars (\$1,000.00), in lawful money of the United States, to be paid to the said United States, for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

Signed and sealed this 14th day of June, A.D. 1951. The Condition of this Obligation is such,

that, Whereas, the above-named Frank M. Chichester was, on the 14th day of June, A.D. 1951, appointed trustee in the case pending in bankruptcy in the said Court, wherein Superior Casting Co., Inc., is the Bankrupt, and he, the said Frank M. Chichester as trustee, has accepted said trust with all the duties and obligations pertaining thereto.

Now, Therefore, if the said Frank M. Chichester, as aforesaid, shall obey such orders as said Court may make in relation to said trust, and shall faithfully and truly account for all the moneys, assets, and effects of the estate of the said Bankrupt which shall come into his hands and possession and shall in all respects faithfully perform all his official duties as said trustee, then this obligation to be void; otherwise to remain in full force and virtue.

Signed and sealed in the presence of:

/s/ FRANK M. CHICHESTER,

[Seal]

FIDELITY AND DEPOSIT
COMPANY OF MARYLAND,

By /s/ S. M. SMITH,

Attorney-in-Fact.

/s/ OTTO A. GERTH.

Examined and recommended for approval as provided in Rule 8.

Approved this 15th day of June, A.D. 1951.

/s/ BENNO M. BRINK,

Referee in Bankruptcy.

State of California,
County of Los Angeles—ss.

On this 14th day of June, 1951, before me, Theresa Fitzgibbons, a Notary Public, in and for the said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared S. M. Smith, known to me to be the Attorney-in-Fact of the Fidelity and Deposit Company of Maryland, the Corporation that executed the within instrument, and acknowledged to me that he subscribed the name of the Fidelity and Deposit Company of Maryland thereto and his own name as Attorney-in-Fact.

[Seal] /s/ THERESA FITZGIBBONS,
Notary Public in and for the County of Los Angeles,
State of California.

My commission expires May 3, 1954.

[Endorsed]: Filed June 15, 1951, Referee.

[Endorsed]: Filed June 21, 1951, U.S.D.C. [10]

[Title of District Court and Cause.]

ADDITIONAL BOND OF FRANK M.
CHICHESTER

Know All Men By These Presents:

That we, Frank M. Chichester of Los Angeles, California, as Principal, and the Fidelity and Deposit Company of Maryland, a corporation duly

incorporated under the laws of the State of Maryland, and authorized to act as Surety under the act of Congress approved August 13, 1894, whose principal office is located in Baltimore, State of Maryland, as Surety, are held and firmly bound unto the United States of America in the sum of Ninety-nine Thousand and No/100 Dollars (\$99,000.00), in lawful money of the United States, to be paid to the said United States, for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

Signed and sealed this 2nd day of January, A.D. 1952.

The Condition of this Obligation is such, that, Whereas, the above-named Frank M. Chichester was, on the 14th day of June, A.D. 1951, appointed trustee in the case pending in bankruptcy in the said Court, wherein Superior Casting Co., Inc., is the Bankrupt, and he, the said Frank M. Chichester, has accepted said trust with all the duties and obligations pertaining thereto; and Whereas, by a further order of the Court dated January 2, 1952, the said Frank M. Chichester is required to file an additional bond in the sum above named.

Now, Therefore, if the said Frank M. Chichester, as aforesaid, shall obey such orders as said Court may make in relation to said trust, and shall faithfully and truly account for all the moneys, assets, and effects of the estate of the said Bankrupt which shall come into his hands and possession and shall in all respects faithfully perform all his official duties

as said trustee, then this obligation to be void; otherwise to remain in full force and virtue.

Signed and sealed in the presence of:

/s/ FRANK M. CHICHESTER,

[Seal]

FIDELITY AND DEPOSIT
COMPANY OF MARYLAND,

By /s/ V. L. N. PARKER,
Attorney-in-Fact.

/s/ GEORGE GARDNER,
Attorney-at-Law.

Examined and recommended for approval as provided in Rule 8.

Approved this 2nd day of January, A.D. 1952.

/s/ BENNO M. BRINK,
Referee in Bankruptcy.

State of California,
County of Los Angeles—ss.

On this 2nd day of January, 1952, before me, S. M. Smith, a Notary Public, in and for the said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared V. L. N. Parker, known to me to be the Attorney-in-Fact of the Fidelity and Deposit Company of Maryland, the Corporation that executed the within instrument, and acknowledged to me that he subscribed the name of the Fidelity and Deposit

Company of Maryland thereto and his own names as Attorney-in-Fact.

[Seal] /s/ S. M. SMITH,
Notary Public in and for the County of Los Angeles, State of California.

My commission expires February 18, 1954.

[Endorsed]: Filed January 2, 1952, Referee.

[Endorsed]: Filed January 4, 1952, U.S.D.C. [11]

[Title of District Court and Cause.]

CERTIFICATE OF REFEREE ON REVIEW
OF ORDER GRANTING PETITION TO
COMPROMISE CONTROVERSY

To the Honorable William M. Byrne, Judge of the
above-entitled Court:

I, Benno M. Brink, one of the Referees in Bankruptcy of the above-entitled Court, do hereby file, at the request of Reuben G. Hunt, a Referee in Bankruptcy of said Court, his certificate on the review of his order entered in the above-entitled matter on November 15, 1951, granting the petition of the trustee in bankruptcy for the compromise of a controversy under Section 27 of the Bankruptcy Act. The said certificate is in the form as prepared and drafted by Referee Hunt. [12]

EHRLICH & BLONDER,
Attorneys for Trustee.

RUSSELL B. SEYMOUR and DANIEL W.
GAGE,

Attorneys for Objectors to Proposed Compro-
mise.

ROBERT H. SHUTAN,

Attorney for Bill Lepper Motors, Inc.

JAMES T. BYRNE,

Attorney for Consolidated Casting Company.

I.

Statement of the Case

This is an involuntary bankruptcy commenced February 19, 1951. On the same date a petition for appointment of a receiver was filed. On February 20, 1951, an order was entered appointing Leslie S. Bowden as receiver. He thereupon qualified. With the approval of the Court, Russell B. Seymour was appointed as his attorney. On March 12, 1951, a petition for an order to show cause and for a temporary restraining order against Title Insurance & Trust Co. was filed. On March 16, 1951, a request for an admission of facts under Rule 36 of Federal Rules of Civil Procedure was filed. On March 28, 1951, a motion and notice of motion for summary judgment under Rule 56 of Federal Rules of Civil Procedure were filed. On April 3, 1951, a petition was filed by Bill Lepper Motors, Inc., for leave to proceed with foreclosure sale of trust deed. An adjudication was made on April 13, 1951. On May 3, 1951, notice of taking of deposition under Rule 26 of Federal Rules of Civil Procedure was filed. On

May 3, 1951, an answer was filed by the receiver to the petition for leave to proceed with foreclosure sale of trust deed filed by Bill Lepper Motors, Inc. On May 24, 1951, a petition was filed by the receiver for an order determining the rights of Consolidated Casting Company in said real property. [13]

On May 29, 1951, an answer thereto was filed by Bill Lepper Motors, Inc. On May 29, 1951, notice of motion was filed by Bill Lepper Motors, Inc., to strike the petition for order to show cause filed by the receiver on May 24, 1951, and, in the alternative, to strike certain portions of the said petition. The bankrupt's schedules were filed May 29, 1951. On June 14, 1951, an order was entered appointing Frank M. Chichester as trustee in bankruptcy. He thereupon qualified. With the approval of the Court, Ehrlich and Blonder were appointed as his counsel. On June 14, 1951, an order was entered authorizing the receiver to sell real property free and clear of liens. On June 27, 1951, the bankrupt filed its statement of affairs.

On July 27, 1951, an order was entered confirming the sale of certain real property. On July 31, 1951, the trustee filed his petition requiring California By-Products Corporation, among others, to show the claim, if any, of California By-Products Corporation to certain accrued and unpaid rentals; and also requiring Consolidated Casting Company to set forth the amount of rent due from and unpaid by it for the occupation of certain premises, and to pay to the trustee any and all rentals due from it to the trustee or the bankrupt. On July 31, 1951, the

trustee filed a petition against California By-Products Corporation and another requiring California By-Products Corporation to set forth what assets it had in its possession belonging to the bankrupt or the trustee; and to set forth what arrangement it had with the bankrupt regarding the possession, if any, of the bankrupt's assets and what claims or liens, if any, it may have had against any property of the bankrupt in its possession; and to surrender forthwith to the trustee any property belonging to the bankrupt which it had in its possession. On July 31, 1951, the trustee filed [14] his petition against Consolidated Casting Company and another requiring the said Consolidated Casting Company to present and disclose to the Court all the evidence and facts showing what steps, if any, were taken by it to foreclose a chattel mortgage upon certain equipment; and what steps, if any, were taken to conduct the foreclosure sale of the said property; and what claims, if any, it had against this property; and for an order adjudging that the chattel mortgage foreclosure proceedings were ineffective, null and void and that the property covered by said chattel mortgage belongs to the bankrupt or the trustee and is a part of the bankrupt estate.

On August 8, 1951, California By-Products Corporation filed an answer to the petition of the trustee relating to the machinery and equipment, in which it denies that it had in its possession any assets belonging to the bankrupt; and alleges that certain assets of the bankrupt were moved to the

premises of California By-Products Corporation for storage, and that any of such property which the bankrupt did not sell within a period of sixty days became the property of California By-Products Corporation, and that certain of the items of such property were sold within the sixty-day period by the bankrupt, and that certain other items were not sold and became the property of California By-Products Corporation by reason of said agreement. On August 8, 1951, the California By-Products Corporation filed its answer to the trustee's petition against it in regard to rentals, in which it denies that the trustee is entitled to receive any rentals which were due from Industrial Associates; and alleges that California By-Products Corporation agreed to sell to the bankrupt certain aluminum scrap and ingot, and as security for merchandise theretofore delivered to and by the bankrupt, [15] the bankrupt assigned all rentals due as security until all monies due it had been repaid to California By-Products Corporation, and that notice of such assignment had been duly recorded under the state law, and that the bankrupt was indebted to California By-Products Corporation in the sum of \$16,244.07; and denies the trustee any relief by reason of said petition.

On August 17, 1951, Bill Lepper Motors, Inc., a corporation, filed an answer to the trustee's petition relative to the chattel mortgage and alleged that the foreclosure sale was conducted in all respects in accordance with the law. On August 17, 1951, Bill Lepper Motors, Inc., a corporation, filed an answer to the trustee's petition regarding the rentals and

alleged that they should be paid to Bill Lepper Motors, Inc. On September 11, 1951, Bill Lepper Motors, Inc., a corporation, filed its petition for an order directing trustee to pay to it the sum of \$64,944.07 alleged to be due it under a certain deed of trust. On September 25, 1951, the trustee filed his answer in opposition to the petition of Bill Lepper Motors, Inc., a corporation, for an order directing the trustee to pay to it any money under said deed of trust; and for an order that the trust deed held by Bill Lepper Motors, Inc., a corporation, is null and void and of no effect; and for an order adjudging and decreeing that Bill Lepper Motors, Inc., a corporation, was indebted to the bankrupt estate in an amount equal to the personal property converted by it as a result of the chattel mortgage foreclosure sale; and for an order adjudging and decreeing the respective rights of the parties to the funds in the hands of the trustee received by him as the purchase price for the real property in question. On September 26, 1951, a motion was made by California By-Products Corporation, a corporation, to [16] dismiss the petition filed by Bill Lepper Motors, Inc., a corporation, for money to be paid to it under said deed of trust. On September 27, 1951, Daniel W. Gage and Russell B. Seymour representing, respectively, California By-Products Corporation, and E. S. Haven, Armand J. Pihlblad and Sonnett Supply Company, creditors, and Russell B. Seymour representing Leslie S. Bowden, the receiver in bankruptcy, filed a petition for the Court to take such action as may appear proper under the

allegations of the petition. On September 28, 1951, an order was entered authorizing California By-Products Corporation, a corporation, E. S. Haven, Armand J. Pihlblad and Sonnett Supply Company, creditors, to file herein an answer to the claims of Bill Lepper Motors, Inc., a corporation. On October 1, 1951, such an answer was filed by said creditors. On October 15, 1951, the trustee filed herein his petition for leave to compromise controversy. This petition covers all this previous litigation and presents a proposed compromise of the controversies upon the basis of the payment by Consolidated Casting Company of \$20,000 to the estate and the sum of \$1,500 to Bill Lepper Motors, Inc., a corporation, to reduce its allowed claim by \$1,500, thus making available to the estate \$21,500, provided there be no further hearings in connection with these matters and all litigation in connection with the same be dropped.

On October 30, 1951, creditors E. S. Haven, Armand J. Pihlblad, Sonnett Supply Company and California By-Products Corporation, a corporation, filed their objections to the proposed compromise and, also, made demand upon the trustee that certain actions be brought.

On November 15, 1951, findings of fact, conclusions of law and order were entered authorizing the compromise of the controversies pursuant to the trustee's position. On [17] November 23, 1951, California By-Products Corporation, E. S. Haven, Armand J. Pihlblad and Sonnett Supply Corporation

filed herein their petition for a review of the order authorizing the compromise.

The trustee reports that he has received a cashier's check for the \$20,000; that Bill Lepper Motors, Inc., a corporation, has gone on record agreeing to reduce its claim \$1,500; that he has on hand some \$10,000 in cash; and that if the order approving the compromise of the controversy stands, there will be some \$31,500 available in the estate for distribution.

II.

Statement of the Evidence

No evidence other than the record of the case as above set forth, of which the Court is permitted to take judicial notice (*McLeod v. Boone*, CCA 9, 34 ABR (NS) 490, 91 F. (2) 71), was received, although evidence in support of their objections to the compromise was offered by the objecting creditors. The Referee, however, stated to the objecting creditors that he would deny the petition to compromise and permit them to go ahead with the litigation provided they indemnified the estate against all costs and expenses and also guaranteed the estate, by a bond or otherwise, that in the end the estate would receive at least \$21,500. This offer of the Referee was declined by the objecting creditors. The Referee did not take any evidence upon the objections raised and did not pass upon their merits since to do so would have meant that the offer to compromise would be withdrawn. [18]

III.

Question Presented

Was the order confirming the compromise of the controversy justified under all the circumstances of the case?

IV.

Comment on the Law

The approval or disapproval of a proposed compromise of a controversy rests within the sole discretion of the referee, and his decision will not be set aside except for clear error or abuse of discretion. In re Truscott Boat & Dock, W. D. Mich., 92 F. Supp. 430; Drexel v. Loomis, CCA 8, 15 ABR (NS) 405, 35 F. (2) 800.

Where the trustee refuses to act pursuant to the request of creditors, the Court may authorize the creditors to act in the name of the trustee upon such conditions as to costs and security as may seem proper. Johnson v. Barney, CCA 8, 19 ABR (NS) 52, 53 F. (2) 770. See, also, In re American Fidelity, a decision by the late Judge Jenney of this Court, 40 ABR (NS) 379, 28 F. Supp. 462. In our case here the Referee felt that it would not be fair to the creditors generally to reject the proposed compromise and go ahead with further hearings and litigation unless security was furnished by the objecting creditors for costs and expenses and to insure the estate that in the end it would obtain at least \$21,500 by reason of the litigation to be conducted by the objecting creditors.

In determining whether a proposed compromise

of controversy should be approved or rejected by the Court, one of the factors to be considered is the paramount interest of the creditors as a whole and a proper deference to their [19] reasonable views in the premises. *Drexel v. Loomis*, supra.

V.

Findings of Fact and Conclusions of Law

These were entered herein, as above indicated, on November 15, 1951.

VI.

Documents Accompanying This Certificate

1. Petition for Appointment of Receiver, filed February 19, 1951;
2. Petition for Order to Show Cause and for Temporary Restraining Order, filed March 12, 1951;
3. Temporary Restraining Order and Order to Show Cause, entered March 12, 1951;
4. Request for Admission of Facts under Rule 36 of Federal Rules of Civil Procedure, filed March 16, 1951;
5. Motion and Notice of Motion for Summary Judgment under Rule 56 of Federal Rules of Civil Procedure, filed March 28, 1951;
6. Petition for Leave to Proceed with Foreclosure Sale of Trust Deed, filed April 3, 1951;
7. Notice of Taking of Deposition under Rule 26 of Federal Rules of Civil Procedure, filed May 3, 1951;
8. Answer to Order to Show Cause, filed May 3, 1951;

9. Petition for Order to Show Cause, filed May 24, 1951;

10. Answer of Respondent Bill Lepper Motors, Inc., filed May 29, 1951;

11. Notice of Motion to Strike, filed May 29, 1951;

12. Order to Sell Real Property Free and Clear of Liens, entered June 14, 1951; [20]

13. Order Confirming Sale of Real Property, entered July 27, 1951;

14. Petition for Order to Show Cause against Industrial Associates, California By-Products Corporation, Bill Lepper Motors, Inc., and Consolidated Casting Co. re Rentals, filed July 31, 1951;

15. Petition for Order to Show Cause against California By-Products Corporation and Bill Lepper Motors, Inc., re Certain Machinery and Equipment, filed July 31, 1951;

16. Petition for Order to Show Cause against Bill Lepper Motors, Inc., and Consolidated Casting Co. re Chattel Mortgage, filed July 31, 1951;

17. Answer in Opposition to Petition for Order and Order to Show Cause against California By-Products Corporation and Bill Lepper Motors, Inc., re Certain Machinery and Equipment, filed August 8, 1951;

18. Answer in Opposition to Petition for Order and Order to Show Cause against Industrial Associates, California By-Products Corporation, Bill Lepper Motors, Inc., and Consolidated Casting Co. re Rentals, filed August 8, 1951;

19. Answer to Trustee's Petition re Chattel Mortgage, filed August 17, 1951;

20. Answer of Bill Lepper Motors, Inc., to Trustee's Petition re Rentals, filed August 17, 1951;

21. Petition for Order Directing Trustee to Pay Money, filed September 11, 1951;

22. Answer of Frank M. Chichester, Trustee, in Opposition of Petition of Bill Lepper Motors, Inc., for Order Directing Trustee to Pay Monies, filed September 25, 1951;

23. Motion to Dismiss under Rule 12, Federal Rules of Civil Procedure, filed September 26, [21] 1951;

24. Petition filed September 27, 1951;

25. Order Authorizing Creditors to Present Defenses and Claims in Behalf of the Estate, entered September 28, 1951;

26. Answer and Counterclaim Filed by Creditors, filed October 1, 1951;

27. Petition of Trustee for Leave to Compromise Controversy, filed October 15, 1951;

28. Objections to Proposed Compromise, filed October 30, 1951;

29. Demand upon Trustee that Actions Be Brought, filed October 30, 1951;

30. Objections to and Disapproval of Order Authorizing Compromise of Controversy, Findings of Fact, and Conclusions of Law, filed November 13, 1951;

31. Order Authorizing Compromise of Controversy, Findings of Fact, Conclusions of Law, entered November 15, 1951;

32. Petition for Review, filed November 23, 1951.

Dated this 8th day of February, 1952.

/s/ BENNO M. BRINK,
Referee in Bankruptcy.

[Endorsed]: Filed February 8, 1952. [22]

[Title of District Court and Cause.]

PETITION FOR APPOINTMENT OF
RECEIVER

To the Honorable the District Court of the United
States, Southern District of California, Central
Division:

The petition of the undersigned respectfully
shows:

That he is a creditor of the alleged bankrupt
herein with a claim in the amount indicated below.

That it is necessary that a Receiver be appointed
for each of the following reasons:

That the alleged bankrupt is the insured under a
Fidelity Bond with Lumbermen's Mutual Casualty
Co., being Bond No. 20035204-C.B., against defal-
cations against its employers by its officers and
employees.

That prior hereto a claim for the full amount of
said bond, \$10,000.00, was filed with said insurance
company.

That under the terms of said bond, it is necessary

that additional information be furnished immediately to said insurance [23] company.

That in spite of demand made upon the alleged bankrupt by its creditors, the alleged bankrupt has failed and refused to furnish such information to said insurance company.

Your petitioner is informed, believes and, therefore, alleges that unless such information be furnished immediately the liability of said insurance company may terminate.

That the business of the bankrupt consists of the casting business located at 1601 East El Segundo Boulevard, El Segundo, California, which is of the reasonable value of at least \$95,000.00. That same said property is encumbered with a trust deed and chattel mortgage to secure payment of the sum of approximately \$60,000.00. That a default has been declared under the terms of said trust deed and chattel mortgage and a foreclosure thereof will be conducted by the holder of said encumbrance unless restrained by Court.

That all of said property is now in the possession of Lepper Motors, Inc.

That it is the opinion of the petitioner that a bond for the Receiver in the sum of \$2500.00 will be sufficient until such time as further assets come into his hands.

Wherefore, petitioner prays that an order be made appointing a Receiver herein with all powers

which may be granted to a receiver under the provisions of the Bankruptcy Act.

/s/ ARMAND J. PIHLBLAD.

/s/ RUSSELL B. SEYMOUR,
Attorney for Petitioner.

Duly verified.

[Endorsed] : Filed February 19, 1951, [24] Referee.

[Title of District Court and Cause.]

PETITION FOR ORDER TO SHOW CAUSE
AND FOR TEMPORARY RESTRAINING
ORDER

To the Honorable Reuben G. Hunt, Referee in
Bankruptcy:

The petition of Leslie S. Bowden respectfully shows:

That he is the duly appointed, qualified and acting Receiver herein.

That one of the assets of the alleged bankrupt appears to be that certain real property in the City of El Segundo, County of Los Angeles, State of California, described as follows, to wit:

Lots 296 to 300 inclusive in Block 123 of El Segundo Tract in the City of El Segundo, as per map recorded in Book 22, Pages 106 and 107 of maps in the office of the County Recorder of said county,

together with the buildings and improvements located thereon.

That said property apparently is encumbered with a [26] Deed of Trust dated April 14, 1947, wherein Title Insurance & Trust Company is the trustee, and your petitioner is informed, believes and, therefore, alleges Bill Lepper Motors, Inc., a California corporation, is the beneficiary by virtue of an assignment made by the original beneficiary, to wit: Reconstruction Finance Corporation. That a default in the terms of said Deed of Trust has been declared and the said trustee proposes to sell all of said property on March 14, 1951, at 11:00 o'clock a.m., in order to secure payment of the amounts assertedly owing under the terms of the note secured by said Deed of Trust, to wit: the amount of \$59,390.00 with interest from April 14, 1950, and additional expenses and charges, the amount of which is unknown to your petitioner.

Your petitioner is informed, believes and, therefore, alleges that said real property is of the value of at least \$95,000.00. Your petitioner is further informed, believes and, therefore, alleges that if said sale be held by said Title Insurance & Trust Company, the only bidder will be the beneficiary under said Deed of Trust, and that a sum no greater than the amount of said sums assertedly owing as aforesaid will be offered.

Your petitioner is informed, believes, and, therefore, alleges that if a sale of said property be postponed until such time as either the Receiver herein, or a Trustee in Bankruptcy later to be appointed

in the event of an adjudication, can offer said property for sale, a substantial equity will be procured for the benefit of the creditors of the estate.

Your petitioner is further informed, believes and, therefore, alleges that the said beneficiary Bill Lepper Motors, Inc., has other security, the amount of which is not now known to the Receiver, and has received payment on account of said indebtedness, the exact amount of which is not now known to your petitioner.

Your petitioner is further informed, believes [27] and, therefore, alleges that the transfer of said Deed of Trust to said Bill Lepper Motors, Inc., was made with the assistance of the alleged bankrupt herein and for the purpose of taking over the business of the alleged bankrupt, to wit: a casting business, and for the further purpose of hindering or delaying creditors of the alleged bankrupt. Your petitioner at this time is not fully advised as to the facts in connection therewith and makes this allegation presently for the purpose that the filing of the petition herein will not be deemed to be a waiver of such rights as otherwise may exist in favor of the receiver of the estate in bankruptcy.

Wherefore, petitioner prays that orders be made as follows:

1. Directing said Title Insurance & Trust Company and said Bill Lepper Motors, Inc., and each of them, to be and appear before this Court, at a time and place fixed in said order, to show cause, if any there be, why said proposed sale of said real

property under said Deed of Trust should not be restrained pending the further order of the Court, and

2. That an order be made forthwith restraining said Title Insurance & Trust Company, Bill Lepper Motors, Inc., and respective agents and employees, and each of them, from selling or offering for sale said real property, or any part thereof, pending the time of the above-mentioned hearing and pending a further order of Court, and

3. Granting such other and further relief as may be proper.

/s/ LESLIE S. BOWDEN,
Petitioner as Receiver
Aforesaid.

/s/ RUSSELL B. SEYMOUR,
Attorney for Said Petitioner.

Duly verified.

[Endorsed]: Filed March 12, 1951, Referee. [28]

[Title of District Court and Cause.]

TEMPORARY RESTRAINING ORDER AND
ORDER TO SHOW CAUSE

On the reading and filing of the duly verified petition of Leslie S. Bowden, receiver herein, and good cause appearing therefrom and on motion of Russell B. Seymour, attorney for said petitioner,

no adverse interests appearing thereat, now, therefore,

It Is Ordered that Title Insurance & Trust Company, Bill Lepper Motors, Inc., and each of them, be and appear before this Court on the 20th day of March, at the hour of 2:00 o'clock p.m., Room 327, Federal Building, Los Angeles 12, California, to then and there show cause, if any there be, why they and each of them should not be restrained from selling or offering for sale the following described real property, to wit:

Lots 296 to 300 inclusive in Block 123 of El Segundo Tract in the City of El Segundo, as per map recorded in Book 22, Pages 106 and 107 of maps in the office of the County Recorder of said county, together with the [30] buildings and improvements located thereon.

It Is Further Ordered that pending the hearing referred to, the said Title Insurance & Trust Company, Bill Lepper Motors, Inc., and respective agents and employees and each of them, be and they hereby are restrained and enjoined from selling or offering for sale any interest in or to the above-described real property and in particular in respect to that certain sale proposed to be held by said trustee on March 14, 1951, at the hour of 11:00 o'clock a.m.

It Is Further Ordered that if any contest is to be made in this matter either by said Title Insurance & Trust Company or said Bill Lepper Motors, Inc., a written pleading be served upon the attorney for

the receiver, Russell B. Seymour, and the original thereof filed with this Court at least two days prior to the date fixed for said hearing.

/s/ REUBEN G. HUNT,
Referee in Bankruptcy.

Dated March 12, 1951.

[Endorsed]: Filed March 12, 1951, Referee. [31]

[Title of District Court and Cause.]

REQUEST FOR ADMISSION OF FACTS
UNDER RULE 36 OF FEDERAL RULES
OF CIVIL PROCEDURE

To Superior Casting Company, Inc., a California corporation, Alleged Bankrupt; John D. Gray, stockholder, and John D. Gray, Attorney for alleged Bankrupt, 639 South Spring Street, Los Angeles 14, California:

You, and each of you, are hereby requested to admit, on or before March 26, 1951, the truth of the following facts and each of them.

1. The alleged bankrupt herein, Superior Casting Company, Inc., has no claim of offset against Armand J. Pihlblade.

2. The alleged bankrupt herein, Superior Casting Company, Inc., has no claim of counterclaim against Armand J. Pihlblade.

3. Armand J. Pihlblade is not indebted to the alleged bankrupt herein.

4. Armand J. Pihlblade has no security for his claim.

5. The alleged bankrupt herein, Superior Casting Company, Inc., has no claim of offset against Sonnett Supply Co. [23]

6. The alleged bankrupt herein, Superior Casting Company, Inc., has no claim of counterclaim against Sonnett Supply Co.

7. Sonnett Supply Co. is not indebted to the alleged bankrupt herein.

8. Sonnett Supply Co. has no security for its claim.

9. The alleged bankrupt herein, Superior Casting Company, Inc., has no claim of offset against E. F. Haven, doing business as E. F. Haven & Associates.

10. The alleged bankrupt herein, Superior Casting Company, Inc., has no claim of counterclaim against E. F. Haven, doing business as E. F. Haven & Associates.

11. E. F. Haven, doing business as E. F. Haven & Associates, is not indebted to the alleged bankrupt herein.

12. E. F. Haven, doing business as E. F. Haven & Associates, has no security for his claim.

13. On or about October 25, 1950, and within

four months immediately preceding the date of bankruptcy, February 19, 1951, the alleged bankrupt was indebted to The Pacific Telephone & Telegraph Company in the amount of \$164.77.

14. At said time, on or about October 25, 1950, The Pacific Telephone & Telegraph Company had no security of the alleged bankrupt.

15. At said time, on or about October 25, 1950, the alleged bankrupt paid to said The Pacific Telephone & Telegraph Company the sum of \$164.77.

16. Said payment of \$164.77 was made by the alleged bankrupt in payment of said indebtedness of \$164.77.

Dated this 16th day of March, 1951.

/s/ RUSSELL B. SEYMOUR,
Attorney for Petitioning
Creditors.

Affidavit of Service by mail attached.

[Endorsed]: Filed March 16, 1951, Referee. [33]

[Title of District Court and Cause.]

MOTION AND NOTICE OF MOTION FOR
SUMMARY JUDGMENT UNDER RULE 56
OF FEDERAL RULES OF CIVIL PRO-
CEDURE

To Superior Casting Company, Inc., a California
corporation, alleged bankrupt; John D. Gray,

stockholder, and John D. Gray, attorney for alleged bankrupt, 639 South Spring Street, Los Angeles 14, California:

You, and each of you, are hereby notified that on the 12th day of April, 1951, at the hour of 2:00 o'clock p.m., the undersigned, Russell B. Seymour, as attorney for the petitioning creditors herein, will move for a summary judgment adjudging Superior Casting Company, Inc., to be bankrupt within the purview of the Bankruptcy Act.

The grounds for said motion will be that the matters of defense set forth in the answer of the bankrupt in conjunction with matters contained in the request for admission of facts under Rule 36 of the Federal Rules of Civil Procedure do not set up facts sufficient to constitute a defense to the creditors' petition filed herein in respect to the first account of bankruptcy set out in [35] Paragraph VII of said creditors' petition. The said motion will be based upon the records and files of this proceeding, including, among other things, said creditors' petition, the answer filed thereto, said request for admission of facts under Rule 36 of Federal Rules of Civil Procedure, and the purported answer to request for admission of facts.

Points and authorities are attached hereto.

/s/ RUSSELL B. SEYMOUR,
Attorney for Petitioning
Creditors. [36]

Points and Authorities

Summary judgment is proper where there is a question of law but no issue of fact.

Federal Practice and Procedure Rules Ed.
Barron and Holtzoff, Vol. 3, Section 1234,
p. 72 et seq.

Bartle v. Travelers Ins. Co., 5th Circ. 1948,
171 Fed. 2d, 469.

New York State Guernsey Breeders' Co-Op
v. Wickard 2d Circ. 1944, 141, Fed. 2d, 805.

Fox v. Johnson and Wimsatt, App. D.C. 1942,
127 Fed. 2d, 729.

The purported answer to request for admission of facts of the alleged bankrupt is ineffective. Denials responding to requests for admissions must be sworn to and an unverified statement or denial will be disregarded.

Beasley v. U. S. D.C.S.C., 1948, 81 Fed.
Supp. 518.

Requirements that answers to requests for admissions be verified is not a mere technicality and failure to comply strictly with the requirement can not be waived.

Beasley v. U. S., D.C.S.C., 1948, 81 Fed.
Supp. 518.

Fed. Rule of Civil Procedure, No. 36.

Fed. Rule of Civil Procedure, No. 56.

Batson v. Porter, 4th Circ. 1946, 154 Fed. 2d,
p. 566. [37]

Walsh v. Connecticut Mutual Life Insurance Company, D.C. New York, 1939, 26 Fed. Supp. 566.

Federal Practice and Procedure Rules Ed. Vol. 3, Section 1234, p. 100.

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 28, 1951, Referee. [38]

[Title of District Court and Cause.]

PETITION FOR LEAVE TO PROCEED WITH
FORECLOSURE SALE OF TRUST DEED

To the Honorable Reuben G. Hunt, Referee in
Bankruptcy:

The petition of Bill Lepper Motors, Inc., a California corporation, respectfully shows:

I.

That petitioner is a California corporation with its principal place of business in the County of Los Angeles, State of California.

II.

That one of the assets of the estate of this alleged bankrupt is certain real property located in the City of El Segundo, County of Los Angeles, State of California, described as follows:

Lots 296 to 300, inclusive, in Block 123 of El Segundo Tract in the City of El Segundo, as per map recorded in Book 22, pages 106 and

107 of maps in the office of the County Recorder of said county, [40] together with the buildings and improvements located thereon.

III.

That your petitioner is the holder, owner and beneficiary of a deed of trust on the above-described real property and improvements, which deed of trust is dated April 14, 1947, and executed by Superior Casting Company, Inc., and recorded May 2, 1947, in Book 24521, Page 242, Official Records, Los Angeles County.

That the original beneficiary of such deed of trust was Reconstruction Finance Corporation; and that said original beneficiary has heretofore and for a valuable consideration assigned such beneficial interest in said deed of trust to your petitioner.

That the present unpaid balance of principal owing on the obligation secured by said deed of trust is the amount of \$59,390.00 and that in addition thereto there is also remaining unpaid interest and other charges.

That the alleged bankrupt has been in default under the terms of said deed of trust, and that your petitioner has heretofore caused such a default formally to be declared and noticed. That the Trustee under said deed of trust had heretofore set a date for the sale of such property, but that such sale has been restrained by order of this Court.

That the actual value of this real property and improvements is no greater than the amount owing to your petitioner under said deed of trust. That

the value of this property may decrease and thus subject your petitioner to serious financial loss as a result thereof.

That there has not been an adjudication in this matter; that the alleged bankrupt has indicated a contest to the Involuntary Petition in Bankruptcy herein by the filing of an Answer; and that therefore there is no Receiver or Trustee in this bankruptcy proceeding who is in a position to conduct an immediate sale and thus offer some protection to the interests of your petitioner. [41] That unless the present Restraining Order against your petitioner is vacated and the prayer of this petition granted, your petitioner as the beneficiary under such trust deed will sustain serious financial loss.

Wherefore, your petitioner prays for an order of this Court granting your petitioner and the Trustee under the deed of trust herein, leave and authority to proceed with the foreclosure sale under said deed of trust, and for such other relief as may be proper.

Dated this 2nd day of April, 1951.

/s/ ROBERT H. SHUTAN,

Attorney for Petitioner, Bill
Lepper Motors, Inc.

Duly verified.

[Endorsed]: Filed April 3, 1951, Referee. [42]

[Title of District Court and Cause.]

NOTICE OF TAKING OF DEPOSITION UNDER RULE 26 OF FEDERAL RULES OF CIVIL PROCEDURE

To: Bill Lepper Motors, Inc., a corporation, petitioner herein, Wm. S. Lepper, president and managing officer of Bill Lepper Motors, Inc., Robert H. Shutan, 333 South Beverly Drive, Beverly Hills, California, attorney for said Bill Lepper Motors, Inc., and each of you:

Please Take Notice that on the 8th day of May, 1951, at the hour of 10:00 o'clock a.m., the receiver herein, Leslie S. Bowden, by his attorney, Russell B. Seymour, will under Rule 26 of the Federal Rules of Civil Procedure take the deposition of Bill Lepper Motors, Inc., a corporation, by examination of Wm. S. Lepper, president and managing officer of said Bill Lepper Motors, Inc.; and that said deposition will be taken before C. W. McClain, a notary public in and for the County of Los Angeles, State of California, in the courtroom of the Honorable Reuben G. Hunt, Referee in Bankruptcy, Room 327, Federal Building, Los Angeles 12, California. [44]

Notice Is Further Given that should you wilfully fail to attend at the said time and place, or if you should wilfully fail to permit your deposition to be taken, appropriate relief will be sought under the provisions of Rule 37d of the Federal Rules of Civil Procedure.

Dated: This 3rd day of May, 1951.

/s/ RUSSELL B. SEYMOUR,
Attorney for said Receiver,
Leslie S. Bowden.

Affidavit of Service by Mail attached.

[Endorsed]: Filed May 3, 1951, Referee. [45]

[Title of District Court and Cause.]

ANSWER TO ORDER TO SHOW CAUSE

To the Honorable Reuben G. Hunt, Referee in
Bankruptcy:

Comes now Leslie S. Bowden, receiver in the above entitled matter and answers the petition for leave to proceed with foreclosure sale of trust deed filed by Bill Lepper Motors, Inc., a California corporation as follows:

I.

Admits allegations of paragraph I of said petition.

II.

Admits the allegations contained in paragraph II of said petition.

III.

Admits that the said petitioner is the record holder, owner and beneficiary of a deed of trust on the above described real property, and improvements, said deed of trust being dated October 14,

1947, and executed by Superior Casting Company, Inc., and recorded May 2, 1947, in book 24521, page 242, Official Records of [47] Los Angeles County, but in this connection, upon belief, denies that the said petitioner is the beneficial holder, owner or beneficiary of said deed of trust and alleges that said petitioner holds said deed of trust for the use and benefit of the bankrupt herein and of the receiver.

Admits that the original beneficiary of such deed of trust was Reconstruction Finance Corporation; and admits that said Reconstruction Finance Corporation assigned said deed of trust to the said petitioner, but in this connection, again, upon information and belief, the receiver alleges that said petitioner holds said deed of trust for the use and benefit of the bankrupt herein and the receiver.

For lack of information or belief and upon that ground, the receiver denies that there is any sum whatsoever owing under the obligation secured by said deed of trust.

The receiver admits that the bankrupt has been in default under the terms of said deed of trust and that the petitioner has heretofore caused such default formally to be declared and noticed and that the trustee under said deed of trust has heretofore set a date for the sale of said property and that said sale has been and now is restrained by order of this Court.

The receiver denies that the actual value of said real property and improvements is no greater than the amount owing to the petitioner from the said

deed of trust and upon information and belief alleges that said property is of a value of at least \$80,000.00 to \$100,000.00

That since the filing of said petition the said Superior Casting Company, Inc., has been adjudged a bankrupt but to the date hereof no trustee has been appointed.

The receiver denies that the petitioner will sustain any loss if the present restraining order shall be continued for a reasonable time for the following purposes among others: [48]

1. To permit a sale of the property by the Trustee in bankruptcy when duly appointed and qualified.

2. To abide the results of the determination of a court of the rights of the parties herein.

IV.

Each and all allegations of said petition not herein specifically admitted are denied.

And as a Matter of Further Defense

The receiver alleges that examinations and investigations are now being conducted by the receiver to develop such evidence as there may be in respect to the rights of the parties herein and such examinations are **not yet concluded.**

The taking of a deposition, under Rule 26 of the Federal Rules of Civil Procedure, of Bill Lepper Motors, Inc., the petitioner, by examination of Wm. S. Lepper, president and managing officer of said

Bill Lepper Motors, Inc., is now fixed for the 8th day of May, 1951, at the hour of 10:00 o'clock a.m. In the event that further defenses to the petition herein are developed through said depositions or otherwise, the receiver prays leave to file an amended or supplemental answer.

/s/ RUSSELL B. SEYMOUR,
Attorney for Leslie S.
Bowden, Receiver.

Duly verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed May 3, 1951, Referee. [49]

[Title of District Court and Cause.]

PETITION FOR ORDER TO SHOW CAUSE

To the Honorable Reuben G. Hunt, Referee in
Bankruptcy:

The petition of Leslie S. Bowden respectfully shows:

That he is the duly appointed, qualified and acting Receiver herein.

That one of the assets of the within estate consists of the following described property, to wit:

Lots 296 to 300, inclusive, in Block 123 of El Segundo Tract in the City of El Segundo, as per map recorded in Book 22, Pages 106 and 107 of maps in the office of the County Recorder of said county, together with the buildings and improvements located thereon.

That said property apparently is encumbered with a Deed of Trust dated April 14, 1947, recorded May 2, 1947, in Book 24521, page 242, Official Records of Los Angeles County, wherein Title Insurance and Trust Company is the trustee and, your petitioner [51] is informed, believes and, therefore, alleges, Bill Lepper Motors, Inc., a California corporation, appears to be the beneficiary by reason of an assignment made by the original beneficiary, to wit: Reconstruction Finance Corporation.

That said Trustee and said beneficiary claim that there is owing under the terms of the note secured by said Deed of Trust the sum of approximately \$59,390.00, with interest from April 14, 1950, and additional expenses and charges the amount of which is unknown to your petitioner.

That on or about the 1st day of November, 1950, said Bill Lepper Motors, Inc., purported to lease a portion of the above-described premises to Consolidated Castings Co. for a period of five years from that date.

That said premises can be sold to the best advantage of the estate free and clear of liens and encumbrances, including the lease assertedly held by the said Consolidated Castings Co.

It is the contention of the Receiver and he, therefore, alleges that any rights which said Consolidated Castings Co. may possess in or to said premises by virtue of said asserted lease are co-extensive with and dependent upon the lien on said premises held by the said Bill Lepper Motors, Inc., and that upon payment of any obligation owing to said Bill Lepper Motors, Inc., or upon termination of any lien held

by Bill Lepper Motors, Inc., the said leasehold interest of Consolidated Castings Co. was or will be no longer effective.

The petitioner further alleges that he has heretofore filed certain pleadings in connection with other proceedings now pending between the petitioner and said Title Insurance and Trust Company and Bill Lepper Motors, Inc., in which pleadings the petitioner has referred generally to certain defenses to and claims against said Bill Lepper Motors, Inc., particularly in respect to the validity of said Deed of Trust and a Chattel Mortgage [52] held by Bill Lepper Motors, Inc.

It appears that said defenses and claim may, likewise, exist against Consolidated Castings Co. The petitioner has not completed his investigation concerning said matters and is unable at this time fully to set forth such defenses or claims and is unable at this time adequately to present such matters to the Court. Some of said matters are as follows:

(1) During the month of October, 1950, said Bill Lepper Motors, Inc., purported to sell certain personal property of the bankrupt subject to a chattel mortgage securing the same obligation as is secured by said deed of trust. Said personal property was of the reasonable value of at least \$18,700.00 and was assertedly purchased by Consolidated Castings Co. at said purported sale for the sum of \$1500.00 and said Consolidated Castings Co. now claims to be the owner of said personal property.

(2) The petitioner further alleges that at the time said Bill Lepper Motors, Inc., took possession of the real property of the bankrupt, there was located thereon sundry personal property consisting of supplies of fluxes, oils, and office furnishings and equipment of the estimated reasonable value of \$5,000.00, not subject to the asserted lien of Bill Lepper Motors, Inc., and that all thereof was converted by said Bill Lepper Motors, Inc., and Consolidated Castings Co. to their own use.

(3) That said Bill Lepper Motors, Inc., acquired the obligation secured by said trust deed and chattel mortgage from the Reconstruction Finance Corporation by arrangements made with the [53] bankrupt for the purpose of taking over all of the assets of the bankrupt to the exclusion of creditors of the bankrupt. That the bankrupt was then insolvent. That the said Bill Lepper Motors, Inc., without any consideration passing to the bankrupt or its creditors, entered upon the said premises, took over all assets of the bankrupt including said property not subject to the lien of said Reconstruction Finance Corporation obligation, secured to itself existing customers of the bankrupt and transferred said business to said Consolidated Castings Co. who since about November 1, 1950, has been operating said business at a substantial profit, the exact amount thereof being unknown to the petitioner. That said Consolidated Castings Co. at all times has been and now is an agent and alter ego of said Bill Lepper Motors, Inc. That said purported five-year lease of the premises made by Bill Lepper Motors, Inc., to

Consolidated Castings Co. was made for the purpose of depressing, and did depress, the saleable value of said premises.

That said Bill Lepper Motors, Inc., has in open Court consented to the making of an order for the receiver, or the trustee to be appointed, to sell said real property free and clear of liens, with a provision that such rights as the parties may have shall attach to the proceeds of the sale of said property.

Your petitioner further alleges that prior to bankruptcy the bankrupt entered into a lease of another portion of said premises with Industrial Associates at a monthly rental of \$600.00 per month, no part of said rental has been paid for the period commencing November 1, 1950, and payable for the period ending May 31, 1951. [54] Claims are made to said unpaid funds by said Bill Lepper Motors, Inc., and California By Products Corporation, each of whom has agreed with the Receiver that the Court may make its order directing payment of said rentals and any subsequent rentals to the Receiver, same to be held by the Receiver abiding further orders of the Court.

Wherefore, petitioner prays that an order be issued requiring Bill Lepper Motors, Inc., Consolidated Castings Co., Industrial Associates, Title Insurance and Trust Company and California By Products Corporation and each of them to be and appear before this Court at a time and place fixed in said order to show cause, if any there be, why the following further order or orders should not be made:

I.

Ordering that said real property shall be sold by the receiver herein, or a trustee to be appointed, free and clear of any lien or claim by any of said persons with a provision that such rights as any of the parties may have shall attach to the proceedings of such sale.

II.

Ordering, adjudging and decreeing that any leasehold interest or other right of said Consolidated Castings Co. is coextensive with and dependent upon any lien of said Bill Lepper Motors, Inc., and that said leasehold interest, if any, is terminated (a) on the making of said order to sell said property free and clear of encumbrances, or (b) upon sale of the property by this Court; and requiring said Consolidated Castings Co. to deliver possession of said premises to the receiver at such time as may be fixed by the Court.

III.

Requiring said parties and each of them to set up in writing such claim against said property as may exist or to be forever barred from asserting any claim to or against said property. [55]

IV.

Permitting the receiver, or the trustee to be appointed, to set up and prosecute such defenses or claims which he may have against any of said parties.

V.

Require said Industrial Associates to pay over to

the receiver all rentals now owing or hereafter accruing by reason of its use of said real property.

VI.

Granting such other and further relief as may be proper to the Court.

/s/ LESLIE S. BOWDEN,
Petitioner.

/s/ RUSSELL B. SEYMOUR,
Attorney for Petitioner.

Duly Verified.

[Endorsed]: Filed May 24, 1951. [56]

[Title of District Court and Cause.]

ANSWER OF RESPONDENT, BILL LEPPER
MOTORS, INC.

Comes Now respondent Bill Lepper Motors, Inc., a California corporation, and appearing for itself alone, answers the petition of Leslie S. Bowden, Receiver herein, by admitting, denying and alleging as follows:

I.

Said respondent Bill Lepper Motors, Inc., denies each and every allegation contained in said petition except as follows:

The allegations set forth page 1, line 19 through page 2, line 13;

Page 4, line 28 through page 5, line 5.

II.

Said respondent specifically denies the allegations set forth in the paragraph commencing on line 23, page 4, except that said respondent admits that in open Court it consented to the making of an order for the Receiver or Trustee to sell said real property free and clear of the Deed of Trust owned and held by [58] said respondent upon the strict conditions that such sale be held without delay and that the lien of respondent for the entire balance due on said note and trust deed together with interest and proper costs attach to the proceeds of said sale.

III.

Referring to paragraph III of the prayer of said petition which does not appear to be based upon allegations in the petition, respondent Bill Lepper Motors, Inc., desires to call to the attention of this Court that it has heretofore set forth its claim against this property by filing with this Court a "Petition for Leave to Proceed with Foreclosure Sale of Trust Deed" on or about the 2nd day of April, 1951.

Wherefore, respondent Bill Lepper Motors, Inc., prays that petitioner herein be granted no order against said respondent beyond an order of Court directing a Receiver or Trustee to make an immediate sale of the real property of this estate subject to the lien rights of respondent by virtue of respondent's Deed of Trust being transferred to the proceeds of such sale and such amount as may be

computed therefrom paid over to said respondent without delay.

Dated this 28th day of May, 1951.

/s/ ROBERT H. SHUTAN,
Attorney for Respondent,
Bill Lepper Motors, Inc.

Duly verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed May 29, 1951, Referee. [59]

[Title of District Court and Cause.]

NOTICE OF MOTION TO STRIKE

To Leslie S. Bowden, Receiver, and Petitioner Herein, and to Russell B. Seymour, Esq., his Attorney:

You Will Please Take Notice that on Thursday, the 31st day of May, 1951, at 2 p.m. of said day, or as soon thereafter as counsel can be heard, in the courtroom of Honorable Reuben G. Hunt, Referee in Bankruptcy, Federal Building, Los Angeles, California, respondent Bill Lepper Motors, Inc., will move the Court for an order striking out in its entirety the Petition for Order to Show Cause heretofore executed by petitioner on May 24, 1951, and subsequently served upon said Bill Lepper Motors, Inc., as one of the respondents therein.

Said motion will be made upon the grounds that the allegations of said petition including attempted

joinders of various parties as respondents, and the attempted joinder of a number of alleged causes of action constitutes a misjoinder of parties, a misjoinder of causes of action; the allegations and alleged causes [61] of action are not separately stated, and the petition as a whole is so ambiguous, unintelligible and uncertain that said respondent Bill Lepper Motors, Inc., is unable to ascertain what allegations petitioner actually is making and what relief petitioner seeks from said respondent.

Said motion will be made upon the further ground that the allegations in said petition are insufficient to constitute any cause of action against respondent Bill Lepper Motors, Inc.

Said respondent will, at above stated time and place, also move the Court for an order striking out the allegations contained in said petition as follows:

Page 2, line 26 of said petition through and including page 4, line 21 of said petition, on the ground that the material contained therein is irrelevant, uncertain and unintelligible and by the very language of petitioner, does not even constitute an allegation or allegations.

Said respondent will further move the Court at said date and place for an order striking out the following portion of said petition:

The words "Bill Lepper Motors, Inc." from line 7, page 5 of said petition;

Lines 30 through 32 of page 5 of said petition;

Lines 1 through 4, page 6 of said petition.

Said motion will be made upon the grounds that no allegations in said petition provide any basis or support for the relief requested in the lines which respondent will move to strike.

Dated this 28th day of May, 1951.

/s/ ROBERT H. SHUTAN,
Attorney for Bill Lepper
Motors, Inc.

Affidavit of Service by Mail attached.

[Endorsed]: Filed May 29, 1951, Referee. [62]

[Title of District Court and Cause.]

ORDER TO SELL REAL PROPERTY
FREE AND CLEAR OF LIENS

The receiver herein, Leslie S. Bowden, having filed a petition for an order directing the sale of certain real property, to wit:

Lots 296 to 300, inclusive, in Block 123 of El Segundo Tract in the City of El Segundo, as per map recorded in Book 22, Pages 106 and 107 of Maps, in the office of the County Recorder of Los Angeles County, State of California, together with buildings and improvements located thereon

free and clear of liens, and a hearing of said petition having duly come on for hearing on May 31, 1951, at the hour of 2:00 o'clock p.m., Russell B.

Seymour appearing on behalf of said receiver and Robert H. Shutan appearing on behalf of Bill Lepper Motors, Inc., and it appearing that service of said petition and notice of hearing thereof had been regularly served upon said Bill Lepper Motors, [64] Inc., and Title Insurance & Trust Company, no appearance having been made, and no pleading having been filed, by said Title Insurance & Trust Company, and it having been stipulated that the said receiver and the bankrupt estate herein are the owners of said real property and that an order might be made directing the sale of said real property free and clear of any lien against said real property held by said Bill Lepper Motors, Inc., in particular that certain Deed of Trust dated April 14, 1947, recorded May 2, 1947, in book 24521, page 242, Official Records of Los Angeles County, State of California, wherein Title Insurance & Trust Company is the trustee and said Bill Lepper Motors, Inc., is the beneficiary by reason of an assignment made by the original beneficiary, to wit: Reconstruction Finance Corporation, and all other findings or conclusions of law other than herein stated having been waived, now, therefore, the Court makes its findings of fact and conclusions of law as follows:

Findings of Fact

I.

That the above-described real property is an asset of the estate of Superior Casting Company, Inc., a California corporation, Bankrupt, and the said Les-

lie S. Bowden is the duly appointed, qualified and acting receiver thereof.

II.

That the said Bill Lepper Motors, Inc., is the holder of the above-described Deed of Trust.

III.

That it will be to the best interests of the estate and of the parties hereto that said real property be sold free and clear of said lien. [65]

Conclusions of Law

That said real property should be sold free and clear of the above-described lien and Deed of Trust.

Order

Now, Therefore, It Is Ordered that said above-described real property be sold by the receiver, or a trustee of the estate heretofore appointed or to be appointed, free and clear of the above-described lien and Deed of Trust, subject to the following conditions:

1. That the net proceeds of said sale shall be no less than the sum of sixty-three thousand dollars (\$63,000.00).

2. That the net proceeds of said sale shall be held by the said receiver or said trustee heretofore appointed or to be appointed, subject to the further order of this court.

3. That such liens as may be possessed by the said Bill Lepper Motors, Inc., or the said Title

Insurance & Trust Company be, and the same hereby are, transferred to the proceeds to be received from a sale of said real property.

4. That the receiver herein, or any trustee appointed or to be appointed herein, may, by appropriate proceedings and after reasonable notice to said Bill Lepper Motors, Inc., and Title Insurance & Trust Company, obtain a determination by this court of the validity, priority and extent of any lien claimed by said Bill Lepper Motors, Inc., and Title Insurance & Trust Company, and may present for determination any defenses or grounds which he may now or then possess, the Court expressly reserving jurisdiction [66] to determine any of said matters.

Dated: This 14th day of June, 1951.

/s/ REUBEN G. HUNT,
Referee in Bankruptcy.

Approved:

/s/ ROBERT H. SHUTAN,
Attorney for Bill Lepper
Motors, Inc.

/s/ RUSSELL B. SEYMOUR,
Attorney for Leslie S.
Bowden, Receiver.

[Endorsed]: Filed June 14, 1951, Referee. [67]

[Title of District Court and Cause.]

ORDER CONFIRMING SALE OF REAL
PROPERTY

The Honorable Reuben G. Hunt, Referee in Bankruptcy, having, on June 14th, 1951, made and entered his order directing the receiver or trustee of the above-entitled estate to sell certain real property of the above-entitled estate, to wit:

Lots 296 to 300 inclusive in Block 123 of El Segundo Tract in the City of El Segundo, as per map recorded in Book 22, Pages 106 and 107 of Maps, in the office of the County Recorder of Los Angeles County, State of California, together with buildings and improvements thereon, excepting therefrom all minerals, oil, gas and hydro-carbon substances, reserved by Edlou Company, in deed recorded April 29, 1946, in book 23169, page 28 Official Records.

free and clear of liens, and Frank M. Chichester, having been appointed and having qualified as a trustee in bankruptcy in the above-entitled estate, and the said trustee having on July 10th, 1951, pursuant to previous notice to creditors, offered to sell the aforementioned real property, which said offering was made in the Courtroom of the Honorable Reuben G. Hunt, Referee in [68] Bankruptcy, Federal Building, Los Angeles, California; and the said real property having been offered for sale pursuant to and upon the terms set forth in the aforementioned order of this Court, dated June 14th, 1951;

and the said real property having been offered for sale subject to additional conditions, to wit:

That the trustee did not warrant or guarantee the validity or efficacy of any leases or leasehold interests which might exist on the aforementioned real property; and

That the trustee did not warrant or guarantee title to a large furnace and a crane system, located on the aforementioned real property; and

At said sale one Hugo E. Aleidis having been the high bidder for said property upon the aforementioned conditions, which said bid by the said Hugo E. Aleidis was the sum of \$75,000.00 for said real property.

Now, therefore, It Is Ordered that the sale of the above-described real property by the trustee of the above-entitled estate to Hugo E. Aleidis, or his nominee, for the sum of \$75,000.00 be and the same is hereby confirmed and approved, subject to the following conditions:

1. That the aforementioned sum of \$75,000.00 is to be paid by the said Hugo E. Aleidis, or his nominee, as follows: \$7,000.00 to be paid at once to the trustee and the balance of \$68,000.00 to be deposited in an escrow to be opened with the Title Insurance and Trust Company.

2. That the trustee, through the aforementioned escrow, furnish the said Hugo E. Aleidis, or his nominee, with the usual form of policy of title insurance and that the trustee and the said purchaser, or his nominee pro-rate in the usual method such current taxes as may exist against the aforemen-

tioned property; and that the said Hugo E. Aleidis, or his nominee, be given the privilege of taking over any insurance which may exist on the [69] aforementioned real property.

3. That the trustee transfer title to the aforementioned real property free and clear of that certain lien and Deed of Trust held by Bill Lepper Motors, Inc., dated April 14, 1947, recorded May 2, 1947, in Book 24521, page 242 of Official Records of Los Angeles County, State of California, wherein Title Insurance and Trust Company is the trustee and said Bill Lepper Motors, Inc., is the beneficiary by reason of an assignment made by the original beneficiary, to wit: Reconstruction Finance Corporation; and further that title to said real property be transferred to the purchaser free and clear of any other liens or encumbrances which may exist against said real property.

4. That the proceeds of the sale of the aforementioned real property to Hugo E. Aleidis, or his nominee, are, after the payment of or satisfaction of such tax liens as may exist against said real property, to be delivered and paid to the trustee herein, subject to the further order of this court. That such liens as may be possessed by Bill Lepper Motors, Inc., or the Title Insurance and Trust Company, be and the same are hereby transferred to the proceeds which are to come into the possession of the trustee from the sale of the aforementioned real property. That thereafter the trustee herein may, by appropriate proceedings, obtain the determination by this court of the validity, priority and

extent of any lien claimed by Bill Lepper Motors, Inc., and Title Insurance and Trust Company, and may present for determination any defenses or grounds which he may possess concerning said lien. That the court herein expressly reserves jurisdiction to determine any and all of said matters.

5. That the aforementioned sale by the trustee to Hugo E. Aleidis, or his nominee, is made upon the express condition and with the understanding that the trustee herein does not warrant or guarantee the validity or efficacy of any leases or [70] leasehold interests which may exist on said real property by the occupants thereof and any other persons.

6. That the aforementioned sale by the trustee to Hugo E. Aleidis, or his nominee, is made upon the express condition and with the understanding that the trustee herein does not warrant or guarantee to the purchaser, or any other person, title to one large furnace located on said property and one crane system located on said property.

7. That upon the close of escrow covering the sale of the aforementioned real property to Hugo E. Aleidis, or his nominee, the said Hugo E. Aleidis, or his nominee, shall thereafter be entitled to collect whatever rents may thereafter become due from the occupants of the aforementioned real property.

Dated: This 27th day of July, 1951.

/s/ REUBEN G. HUNT,
Referee in Bankruptcy.

[Endorsed]: Filed July 27, 1951. Referee. [71]

[Title of District Court and Cause.]

PETITION FOR ORDER TO SHOW CAUSE
AGAINST INDUSTRIAL ASSOCIATES,
CALIFORNIA BY-PRODUCTS CORPO-
RATION, BILL LEPPER MOTORS, INC.,
AND CONSOLIDATED CASTING CO. RE
RENTALS

To the Honorable Reuben G. Hunt, Referee in
Bankruptcy:

The petition of Frank M. Chichester respectfully
alleges:

1. That he is the duly qualified and appointed
trustee acting herein.

2. That among the assets of the above-entitled
estate there is a certain parcel of real property lo-
cated at 1601 El Segundo Boulevard, El Segundo,
California, which said real property was, on July
10th, sold at public sale and which said sale is now
in the process of being completed through an escrow
being held at the Title Insurance and Trust Com-
pany.

3. That a portion of said real property has been
for some time past occupied by a business known
as Industrial Associates. That your petitioner is in-
formed and believes, and therefore alleges that the
said Industrial Associates occupies the said premises
by virtue of a lease entered into with the bankrupt
at a [72] monthly rental of \$660.00 per month. That
for some time past the said Industrial Associates

has refused to pay their monthly rental to the trustee or any other person for the reason that claims to said rental have been asserted by Bill Lepper Motors Inc., and claimed by California By Products Corporation. That your trustee is entitled to receive from said Industrial Associates any and all rentals which have accrued from said Industrial Associates and are unpaid.

4. That another occupant of a portion of the premises aforementioned is Consolidated Casting Co. That the said Consolidated Casting Co. occupies said premises by virtue of a lease arrangement entered into between the said Consolidated Casting Co. and Bill Lepper Motors, Inc., or the bankrupt. That said lease arrangement provides that the said Consolidated Casting Co. pay a monthly rental of \$370.00 per month. That to date your trustee has received no rental from the Consolidated Casting Co., although the said Consolidated Casting Co. has been occupying real property owned by the trustee or the bankrupt. That the trustee is informed and believes, and therefore alleges, that the said Consolidated Casting Co. refuses to pay any rental to the trustee for the reason that Bill Lepper Motors, Inc., claim said rentals.

Wherefore, your petitioner prays that an order be issued requiring the said Industrial Associates, Bill Lepper Motors, Inc., Consolidated Casting Co., and California By Products Corporation, and each of them, to be and appear before this court at a time and place to be fixed in said order to show

cause, if any there be, why the following further orders should not be made by this court:

I.

Ordering, adjudging and decreeing that Industrial Associates, Bill Lepper Motors, Inc., California By Products Corporation come forth and set forth (a) the amount of rent due and unpaid from Industrial Associates for occupancy of a portion of the [73] premises located at 1601 El Segundo Boulevard, El Segundo, California, and (b) the respective claims, if any, of Bill Lepper Motors, Inc., and California By Products Corporation, in and to the said accrued and unpaid rentals; and further ordering, adjudging and decreeing that the said Industrial Associates pay over to the trustee herein forthwith any and all rentals due and unpaid to the trustee or bankrupt herein.

II.

Ordering, adjudging and decreeing that Consolidated Casting Co. and Bill Lepper Motors, Inc., come forth and set forth (a) the amount of rent due and unpaid from Consolidated Casting Co. for occupancy of a portion of the premises located at 1601 El Segundo Boulevard, El Segundo, California, and (b) the respective claims, if any, of Bill Lepper Motors, Inc., in and to the said accrued and unpaid rentals; and further ordering, adjudging and decreeing that the said Consolidated Casting Co. pay over to the trustee herein forthwith any and all rentals due and unpaid to the trustee or bankrupt herein.

I.

III.

Granting such other and further relief as may be proper to the court.

/s/ FRANK M. CHICHESTER,
Petitioner.

EHRlich AND BLONDER,
By /s/ DAVID BLONDER,
Attorneys for Petitioner.

State of California,
County of Los Angeles—ss.

Frank M. Chichester, makes solemn oath that he is the [74] trustee in bankruptcy of the above-named bankrupt and is duly authorized to make the aforesaid petition and this affidavit, and that the statements contained in said petition are true according to the best of his knowledge, information and belief.

/s/ FRANK M. CHICHESTER.

Subscribed and sworn to before me this 30th day of July, 1951.

[Seal] /s/ STELLA LAMAT,
Notary Public in and for Said
County and State.

[Endorsed]: Filed July 31, 1951. [75]

[Title of District Court and Cause.]

PETITION FOR ORDER TO SHOW CAUSE
AGAINST CALIFORNIA BY PRODUCTS
CORPORATION AND BILL LEPPER
MOTORS, INC., RE CERTAIN MACHIN-
ERY AND EQUIPMENT

To the Honorable Reuben G. Hunt, Referee in
Bankruptcy:

The petition of Frank M. Chichester respectfully
alleges:

1. That he is the duly appointed and acting
trustee in bankruptcy in the above-entitled matter.

2. That among the assets of the bankrupt, as set
forth in the schedules of said bankrupt filed herein,
are listed a group of assets of the value of \$10,000.00
in the possession of the respondent, California By
Products Corporation.

3. That your petitioner is informed and believes
that at some time prior to the filing of the bank-
ruptcy petition herein, certain machinery and equip-
ment belonging to the bankrupt was taken into the
possession of the respondent, California By Pro-
ducts Corporation, and that said machinery and
equipment has since said time, and is at present,
in the possession of California By Products Cor-
poration at their place of business 5717 South Dis-
trict Boulevard, Los Angeles, California; that it was
the understanding between the bankrupt and said
California By Products Corporation that said [76]

machinery and equipment would be held by said California By Products Corporation for and on behalf of the said bankrupt until such time as said machinery and equipment could be sold.

4. That although your petitioner has sought to determine what machinery and equipment was turned over to California By Products Corporation, and what machinery and equipment is at present in the possession of California By Products Corporation which now belongs to the trustee as part of the estate of the bankrupt, your petitioner has been, to date, unable so to do.

5. That your petitioner is informed and believes and therefore alleges that the said California By Products Corporation asserts a claim of lien against such machinery and equipment as may be in their possession, but your petitioner has been unable to determine from the said California By Products Corporation the nature of or extent of such lien, if any.

6. That your petitioner is informed and believes and therefore alleges that on or about April 14, 1947, a certain chattel mortgage was entered into between the bankrupt, as mortgagor and Reconstruction Finance Corporation, as mortgagee which said chattel mortgage covered and became a lien upon certain machinery, equipment, furniture, fixtures and appliances belonging to the bankrupt. That said chattel mortgage was subsequently assigned and transferred to Bill Lepper Motors, Inc. That Bill Lepper Motors, Inc., contends that it

has foreclosed upon the machinery and equipment, furniture, fixtures and appliances covered by said chattel mortgage. That your petitioner has been informed that the machinery and equipment in the possession of California By Products Corporation and belonging to the bankrupt, may have been included in the aforementioned chattel mortgage assigned to Bill Lepper Motors, Inc., and that Bill Lepper Motors, Inc., may have foreclosed upon the aforementioned machinery and equipment now in the possession of California By Products [77] Corporation. That your petitioner has sought to obtain information from the parties hereto which will enable him to determine the rights of the parties hereto to the aforementioned machinery and equipment in the possession of California By Products Corporation, but your petitioner has been unable to obtain such information.

Wherefore, your petitioner prays that an order be issued requiring said California By Products Corporation and Bill Lepper Motors, Inc., to be and appear before this court at a time and place to be fixed in said order to show cause, if any there be, why the following orders should not be made:

I.

Ordering the said California By Products Corporation to come forth and set forth what assets it has in its possession belonging to the bankrupt or the trustee herein.

II.

Ordering the said California By Products Cor-

poration to set forth under what arrangements or agreements with the bankrupt it received possession of the assets of the bankrupt.

III.

Ordering the said California By Products Corporation to set forth what claims or liens, if any, it may have against any property of the bankrupt now in its possession.

IV.

Ordering the said California By Products Corporation to surrender forthwith to the trustee herein any property belonging to the bankrupt, which the said California By Products Corporation now has in its possession.

V.

Ordering Bill Lepper Motors, Inc., to come forth and set forth its claims, if any it has, against the aforementioned machinery and equipment in the possession of California By Products [78] Corporation.

VI.

Granting such other and further relief as to the court may seem proper in the premises.

/s/ FRANK M. CHICHESTER,
Petitioner.

EHRlich AND BLONDER,

By /s/ DAVID BLONDER,
Attorneys for Petitioner.

[Endorsed]: Filed July 31, 1951. Referee. [79]

[Title of District Court and Cause.]

PETITION FOR ORDER TO SHOW CAUSE
AGAINST BILL LEPPER MOTORS, INC.,
AND CONSOLIDATED CASTING CO. RE:
CHATTEL MORTGAGE

To the Honorable Reuben G. Hunt, Referee in
Bankruptcy:

The petition of Frank M. Chichester respectfully
alleges:

1. That he is the duly appointed, acting and
qualified trustee herein.

2. That on or about April 14, 1947, a certain
chattel mortgage was executed by the bankrupt as
mortgagor, in favor of Reconstruction Finance Cor-
poration as mortgagee, which said chattel mortgage
covered and became a lien upon certain machinery
and equipment, furniture, fixtures and appliances,
belonging to the bankrupt, which said items of prop-
erty were more particularly set forth in an exhibit
attached to said chattel mortgage; that said chattel
mortgage was security, in conjunction with a certain
Deed of Trust executed by the bankrupt on real
property, for the payment of an indebtedness in the
principal sum of \$100,000.00. That said chattel
mortgage was, at some time, subsequent to its execu-
tion, assigned and transferred to Bill Lepper Mo-
tors, Inc.

3. That your petitioner is informed and believes
and [80] therefore alleges that at some time in 1950

the said Bill Lepper Motors, Inc., attempted to and purportedly did foreclose, under the terms of the aforementioned chattel mortgage, upon the machinery, equipment, furniture, fixtures and appliances at that time belonging to the bankrupt; and that at said foreclosure sale said personal property was purchased by the respondent Consolidated Casting Co., for the sum of \$1,500.00.

4. That your petitioner has attempted to obtain the information from the respondent herein concerning the procedure and legal steps, if any, taken to effectuate the aforementioned foreclosure sale, but your petitioner has been unable to obtain such information from the parties hereto. That your petitioner is informed and believes and therefore alleges that the foreclosure procedure and steps taken by the respondent Bill Lepper Motors, Inc., were not proper and in accordance with law, and that therefore, said foreclosure was of no effect whatsoever; and that the property purportedly purchased by Consolidated Casting Co. at said foreclosure sale, belongs to the bankrupt and the trustee herein and is part of this bankrupt estate.

Wherefore, your petitioner prays that an order be issued requesting Bill Lepper Motors, Inc., and Consolidated Casting Co. to be and appear before this court at a time and place fixed in said order to show cause, if any there be, why the following orders should not be made:

I.

Ordering the said Bill Lepper Motors, Inc., and

Consolidated Casting Co. to present and disclose to this court all the evidence and facts showing what steps, if any, were taken to foreclose upon the aforementioned property and what steps, if any, were taken to conduct the foreclosure sale of the aforementioned property.

II.

Ordering the said Bill Lepper Motors, Inc., and Consolidated Casting Co. to come forth and set forth what claims, if any they have, against the aforementioned property. [81]

III.

Ordering, adjudging and decreeing that the aforementioned chattel mortgage foreclosure proceedings and sale were ineffective, null and void, and that the property covering by said chattel mortgage belongs to the bankrupt or the trustee herein and is part of said bankrupt estate.

IV.

Granting such other and further relief as to the court may seem proper in the premises.

/s/ FRANK M. CHICHESTER,
Petitioner.

EHRlich AND BLONDER,
By /s/ DAVID BLONDER,
Attorneys for Petitioners.

State of California,
County of Los Angeles—ss.

Frank M. Chichester, makes solemn oath that he is the trustee in bankruptcy of the above-named bankrupt and is duly authorized to make the aforesaid petition and this affidavit, and that the statements contained in said petition are true according to the best of his knowledge, information and belief.

/s/ FRANK M. CHICHESTER.

Subscribed and sworn to before me this 30th day of July, 1951.

[Seal] /s/ STELLA LAMAT,

Notary Public in and for Said
County and State.

[Endorsed]: Filed July 31, 1951, Referee. [82]

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[Title of District Court and Cause.]

ANSWER IN OPPOSITION TO PETITION
FOR ORDER AND ORDER TO SHOW
CAUSE AGAINST CALIFORNIA BY-
PRODUCTS CORPORATION AND BILL
LEPPER MOTORS, INC., RE CERTAIN
MACHINERY AND EQUIPMENT

Comes now California By-Products Corporation, and in answer to the petition of Frank M. Chichester, Trustee, admits, denies and alleges as follows:

I.

In answer to paragraph II, denies generally and specifically each and every allegation contained in said paragraph, and denies that there is in the possession of California By-Products Corporation any assets belonging to the bankrupt.

II.

Answering paragraph III, denies generally and specifically each and every allegation contained in said paragraph.

III.

Answering paragraph IV, denies generally and specifically each and every allegation contained in said paragraph, and alleges that the Trustee has not only not attempted to [83] determine what machinery and equipment were turned over to California By-Products Corporation but has refused on his own behalf an invitation to examine the premises to determine whether in truth and reality California By-Products Corporation has any assets belonging to the bankrupt, and further alleges that the Trustee has no information or belief as to any actual machinery or equipment belonging to the bankrupt in the hands of California By-Products Corporation.

IV.

In answer to paragraph V of the petition, denies generally and specifically each and every allegation contained in said paragraph, and denies specifically that there is any machinery or equipment in its possession belonging to the bankrupt.

V.

In answer to paragraph VI of the petition, California By-Products Corporation has no information or belief, and based upon said lack of information or belief, denies generally and specifically each and every allegation contained in said paragraph.

As a Second, Separate and Distinct Defense, California By-Products Corporation, a California Corporation, Alleges as Follows:

I.

That on or about the 5th day of December, 1949, it was approached by the president of the bankrupt, Frank D. Anderson, and was told that a portion of the premises of the bankrupt was being rented and that the bankrupt wanted to dispose of certain scrap and odds and ends which it could not use and asked if California By-Products Corporation would be interested in purchasing the same. Mack Cotler, the president of California By-Products Corporation, replied that it was not, as it did not deal in ferrous metals and that it would take some time to wreck, [84] move and dispose of the scrap mentioned by Mr. Anderson; that Mr. Anderson then stated he must remove the scrap and other items from the premises so that Industrial Associates could move in and that if California By-Products Corporation would give permission to the bankrupt to move the above-mentioned items to the premises of California By-Products Corporation that those items which the bankrupt did not sell within a period

of sixty days would become the sole and exclusive property of California By-Products Corporation for its trouble in accommodating the bankrupt in said matter.

II.

That in pursuance of said agreement, the bankrupt using its own trucks moved the above mentioned items to the premises of California By-Products Corporation, and within the next sixty-day period sold the items of value to Joseph Levin & Sons and to Afton Iron Mine, the proceeds of the sale of which were collected directly by the bankrupt; that also during said period the bankrupt picked up certain items that were on the premises, saying that they would use them after all; and that on or about the 1st day of March, 1950, Frank D. Anderson, the then president of the bankrupt, told Mack Cottler, the president of California By-Products Corporation, that he had removed and sold all of the merchandise of value and that the remainder now belonged to California By-Products Corporation for its trouble. That the reasonable storage charges during the period during which the above-mentioned items were on the premises of California By-Products Corporation would have been the sum of \$90.00 per month.

Wherefore, California By-Products Corporation prays:

1. That Frank M. Chichester, Trustee, and/or Bill Lepper Motors, Inc., take nothing by the petition on file;

2. That an order be issued, decreeing that California By-Products Corporation has in its possession no machinery, [85] merchandise, equipment and/or any items whatever belonging to the bankrupt; and

3. For such other and further relief as to the court may seem fit and proper in the premises.

/s/ DANIEL W. GAGE,
Attorney for California
By-Products Corporation.

Duly verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed August 8, 1951, Referee. [86]

[Title of District Court and Cause.]

ANSWER IN OPPOSITION TO PETITION
FOR ORDER AND ORDER TO SHOW
CAUSE AGAINST INDUSTRIAL ASSOCI-
ATES, CALIFORNIA BY-PRODUCTS
CORPORATION, BILL LEPPER MOTORS,
INC., AND CONSOLIDATED CASTING CO.
RE RENTALS

Comes now California By-Products Corporation, and in answer to the petition of Frank M. Chichester, Trustee, admits, denies and alleges as follows:

I.

In answer to paragraph III of said petition, denies that the Trustee and/or Bill Lepper Motors,

Inc., is entitled to receive from Industrial Associates any or any part of the rentals which have accrued from said Industrial Associates and are unpaid.

II.

In answer to paragraph IV of said petition, California By-Products Corporation has no information or belief, and based upon said lack of information and belief, denies generally and specifically each and every allegation contained in said [88] paragraph.

As a Second, Separate and Distinct Defense, California By-Products Corporation, a California Corporation, Alleges as Follows:

I.

That on or about July 11, 1950, the bankrupt and California By-Products Corporation entered into an agreement in writing whereby, among other things, California By-Products Corporation agreed to sell and deliver to the bankrupt certain aluminum scrap and ingot in the amount of some \$4,500.00, and whereby, as security for the merchandise theretofore delivered and to be delivered, the bankrupt agreed to make an assignment of all rents due and to become due under that certain indenture of lease executed at Inglewood, California, on the 6th day of January, 1950, between the bankrupt and Industrial Associates, the assignment to remain in full force and effect until all the moneys above-mentioned had been repaid to California By-Products Corporation.

II.

That in pursuance of said agreement, an assignment was made on the 11th day of July, 1950, said assignment being executed by the bankrupt by its president, Frank D. Anderson, and notice of assignment executed by California By-Products Corporation by Mack Cottler, its president. A copy of said assignment and notice of assignment is attached hereto marked Exhibit "A," incorporated herein and made a part hereof by reference.

III.

That in pursuance of Sections 3017 to 3029, inclusive, of the Civil Code of the State of California, notice of assignment of account or accounts from the bankrupt to California By-Products Corporation, covering rents due and to become due under the above-mentioned lease, was recorded in the office of the County Recorder on the 14th day of July, 1950, as [89] Instrument No. RF11164-X, a copy being set forth as Exhibit "B."

IV.

That notice of said assignment in the form and manner set forth in Exhibit "A," attached hereto, incorporated herein and made a part hereof by reference, was sent to Industrial Associates, at 1601 El Segundo Boulevard, El Segundo, California, on or about the 14th day of July, 1950.

V.

That in pursuance of said agreement of July 11, 1950, and the subsequent assignment above referred

to, the bankrupt is presently indebted to California By-Products Corporation in the amount of \$16,244.07 (under said agreement and under previous shipments). That in pursuance of the above-mentioned assignment, Industrial Associates commenced in September, 1950, paying the rent under the lease to California By-Products Corporation, until October, 1950.

VI.

That on or about October 19, 1950, Industrial Associates received a letter from Bill Lepper Motors, Inc., to the effect that Bill Lepper Motors, Inc., was now holder of note secured by first deed of trust on the premises, and that all rentals should be paid to Bill Lepper Motors, Inc. A copy of said letter was sent to California By-Products Corporation and was referred to the attorney of California By-Products Corporation for answer.

On October 26, 1950, the original of the letter, as set forth in Exhibit "C," attached hereto, incorporated herein, and made a part hereof by reference, was sent to Industrial Associates, wherein they were again advised that California By-Products Corporation held assignment of rents due and to become due.

That on or about the 3rd day of November, [90] 1950, California By-Products Corporation received the rent check from Industrial Associates covering the period October 20, 1950, to November 20, 1950.

That thereafter Bill Lepper Motors, Inc., again **made demand** upon Industrial Associates that the rents be paid to it, as it had now become the mort-

gagee in possession; and California By-Products Corporation made demand upon Industrial Associates for payment of rents to it, as a valid assignee of the rents due and to become due.

That Industrial Associates has refused to pay rents to either party until forced so to do legally.

Wherefore, California By-Products Corporation prays:

1. That the Trustee, Frank M. Chichester, Industrial Associates, Bill Lepper Motors, Inc., and Consolidated Casting Co. take nothing by the petition on file;

2. That an order be made ordering, adjudging and decreeing that Industrial Associates be ordered to pay forthwith to California By-Products Corporation the amount of rent due and unpaid from it for occupancy of the portion of the premises of the bankrupt located at 1601 El Segundo Boulevard, El Segundo, California;

3. That the respective claims, if any, of the Trustee and Bill Lepper Motors, Inc., in and to the said accrued and unpaid rentals be dissolved; and

4. For such other and further relief as may seem meet and proper to the court.

/s/ DANIEL W. GAGE,

Attorney for California [91]

By-Products Corporation.

EXHIBIT A

Assignment

For Value Received, the undersigned, Superior Casting Company, Inc., a California corporation, herein referred to as "Assignor," hereby assigns, transfers and sets over unto California By-Products Corporation, a California corporation, herein referred to as "Assignee," all moneys now due or hereafter to become due from Industrial Associates, Inc., a California corporation, under that certain indenture of lease executed at Inglewood, California, the 6th day of January, 1950, between Superior Casting Company, Inc., as Lessor, and Industrial Associates, Inc., as Lessee, said lease being for a period of five (5) years, commencing the 20th day of January, 1950, ending at midnight on the 19th day of January, 1955, and being for a total amount of Thirty-nine Thousand Three Hundred Dollars (\$39,300.00), to be paid off after the initial payment of Two Thousand Six Hundred Twenty Dollars (\$2,620.00) at the rate of Six Hundred Fifty-five Dollars (\$655.00) per month, commencing on the 20th day of February, 1950, and continuing until the full amount has been paid; and any and all amendments thereof and supplements thereto as collateral security to said Assignee for any and all indebtedness of the Assignor to said Assignee now existing or hereafter arising in the amount of Forty-five Hundred Dollars (\$4,500.00), and as evidenced by that certain agreement between Superior Casting Company, Inc., and California By-Products Corpo-

ration, calling for the payment of \$4,500.00 to the said California By-Products Corporation by Superior Casting Company, Inc., for merchandise sold or to be sold to the said Superior Casting Company, Inc., by California By-Products Corporation. [92]

Assignor hereby constitutes and appoints the said California By-Products Corporation the true and lawful attorney, irrevocable, of Assignor, to demand, receive, and enforce payments, and to give receipts, releases and satisfactions, either in the name of Assignor or in the name of California By-Products Corporation, in the same manner and with the same effect as Assignor could do if this assignment had not been made.

In Witness Whereof, Assignor has executed these presents this 11th day of July, 1950.

SUPERIOR CASTING
COMPANY, INC.

By /s/ FRANK D. ANDERSON,
President.

Notice of Assignment

Industrial Associates, Inc.
1601 El Segundo Boulevard
El Segundo, California

Please Take Notice that moneys due or to become due under that certain indenture of lease above described to the extent of Forty-five Hundred Dollars (\$4,500.00) have been assigned to California By-Products Corporation. Payments due or to become

due under the same are to be made direct to California By-Products Corporation, at 5717 South District Boulevard, Los Angeles, California.

Please return to us one copy of this Notice, with the Receipt and Consent below set forth, dated and signed by you.

Very truly yours,

CALIFORNIA BY-PRODUCTS
CORPORATION,

By /s/ MACK COTTLER,
President. [93]

EXHIBIT B

Notice of Assignment of an Account or Accounts

Notice Is Hereby Given by Superior Casting Company, Inc., a California corporation, herein designated the "Assignor," whose chief place of business within the State of California is 1601 El Segundo Boulevard, El Segundo, California, and by California By-Products Corporation, a California corporation, herein designated the "Assignee," whose chief place of business within the State of California is 5717 South District Boulevard, Los Angeles, California, that the said Assignor expects to assign the rents due or to become due from Industrial Associates, Inc., under that certain indenture of lease executed at Inglewood, California, the 6th day of January, 1950, between Superior Casting Company, Inc., as Lessor, and Industrial Associates, Inc., as Lessee.

That the assignment is made as collateral security

for the payment to the Assignee of the sum of \$4,500.00 for scrap aluminum and ingots to be sold by the Assignee to the Assignor as per that certain agreement of July 11, 1950.

This Notice is given pursuant to Sections 3017 to 3029, inclusive, of the Civil Code of the State of California.

SUPERIOR CASTING
COMPANY, INC.

By /s/ FRANK D. ANDERSON,
President;
Assignor.

CALIFORNIA BY-PRODUCTS
CORPORATION,

By /s/ MACK COTTLER,
President;
Assignee.

To County Recorder:

Please return to:

Daniel W. Gage, Attorney at Law

740 Rowan Building

458 South Spring Street

Los Angeles 13, California [94]

EXHIBIT C

October 26, 1950.

Industrial Associates, Inc.

1601 East El Segundo Boulevard

El Segundo, California

Gentlemen:

I am in receipt of your letter of October 20, 1950,

and your copy of letter of October 19, 1950, from Bill Lepper Motors relative to your lease with Superior Casting Company, Inc.

This is to advise you that California By-Products Corporation holds a bona fide assignment of rents due and to become due under lease agreement of January 6, 1950, copy of which assignment is in your possession.

Notice of said assignment was recorded with the County Recorder on the 14th day of July, 1950, Instrument No. RF11164-X.

Under said notice and the assignment accepted by you, demand is hereby made upon you for all rents now due and to become due under your lease of January 6, 1950. You are further notified that should you make payments to other than California By-Products Corporation you will be held responsible for same.

Yours very truly,

/s/ DANIEL W. GAGE,
Attorney at Law.

DWG L

cc: California By-Products Corporation
5717 South District Boulevard
Los Angeles 22, California

Duly verified.

Affidavit of service by mail attached.

[Endorsed]: Filed August 8, 1951, Referee. [95]

[Title of District Court and Cause.]

ANSWER TO TRUSTEE'S PETITION
RE CHATTEL MORTGAGE

Comes now Bill Lepper Motors, Inc., a California corporation, and for itself answers the trustee's petition re chattel mortgage by admitting, denying and alleging as follows:

I.

Answering Paragraph 4 of said petition, said respondent denies each and every allegation contained therein; and further answering said Paragraph, said respondent alleges that the foreclosure sale of the personal property under said chattel mortgage was conducted in all respects in accordance with the law.

/s/ ROBERT H. SHUTAN,
Attorney for Respondent
Bill Lepper Motors, Inc.

Duly verified. [97]

[Endorsed]: Filed August 17, 1951, Referee.

[Title of District Court and Cause.]

ANSWER OF BILL LEPPER MOTORS, INC..
TO TRUSTEE'S PETITION RE RENTALS

Comes now Bill Lepper Motors, Inc., a California corporation, and for itself answers the trustee's petition re rights to certain rentals by admitting, denying and alleging as follows:

I.

Admits that this respondent claims the right to the rentals by Industrial Associates; and alleges that Industrial Associates is obligated to pay its rentals to said respondent, Bill Lepper Motors, Inc., by virtue of the obligation of said Industrial Associates under its lease with Superior Casting Company, Inc., and by virtue of the fact that said Bill Lepper Motors, Inc., has succeeded to the rights of said Superior Casting Company, Inc., by virtue of the terms and provisions of that certain deed of trust dated April 14, 1947, between Superior Casting Company, Inc., and Reconstruction Finance Corporation, which deed of trust was duly and validly assigned by said Reconstruction Finance Corporation to Bill Lepper Motors, Inc., for valuable consideration. That by virtue of default in said deed of trust, said Bill Lepper Motors, Inc., [99] under the power and authority granted in the said deed of trust, entered into possession of the properties herein involved in November, 1950, and succeeded to the rights of the lessor; that Industrial Associates has paid no rent to Bill Lepper Motors, Inc., although such payment of rent was duly demanded.

II.

That said respondent, Bill Lepper Motors, Inc., admits that it claims the right to receive rentals from Consolidated Casting Company; that said claim is based upon a lease executed by said Bill Lepper Motors, Inc., as beneficiary in possession under said deed of trust, lessor, and Consolidated

Casting Company, lessee; that said rent is in the amount of \$370.00 per month. That since the execution of this lease between said respondent and Consolidated Casting Company, Bill Lepper Motors, Inc., has received from Consolidated Casting Company under said lease rentals from November, 1950, to June, 1951, in the total sum of \$2,960.00, the last rental received being for the month of June, 1951.

III.

That said Bill Lepper Motors, Inc., admits that its claims for rentals and rights to rentals from the property herein involved is based upon its right to security for and payment of the obligation evidenced by the above-described deed of trust; and said Bill Lepper Motors, Inc., hereby states that it does not claim any rights other than those to which it is entitled under said deed of trust and the promissory note secured thereby.

/s/ ROBERT H. SHUTAN,
Attorney for Respondent
Bill Lepper Motors, Inc.

Duly verified. [100]

[Endorsed]: Filed August 17, 1951, Referee.

[Title of District Court and Cause.]

PETITION FOR ORDER DIRECTING
TRUSTEE TO PAY MONEY

To The Honorable Reuben G. Hunt, Referee in
Bankruptcy:

The petition of Bill Lepper Motors, Inc., a California corporation, respectfully shows and alleges:

1. That heretofore, on the 27th day of July, 1951, this Court made its order confirming sale of real property, which property is more fully described in said order, and which description is hereby referred to and made a part hereof.

2. That your petitioner is the holder, owner and beneficiary of a deed of trust on the above-described real property and improvements, which deed of trust is dated April 14, 1947, and executed by Superior Casting Company, Inc., and recorded May 2, 1947, in Book 24521, Page 242, Official Records of Los Angeles County.

That on or about the 4th day of April, 1951, your petitioner filed with this Court its Petition for leave to proceed with foreclosure sale of trust deed, which petition is of record in this proceeding, and is hereby referred to; that said petition set forth, inter alia, a default by the bankrupt under the terms of said deed of [102] trust. That after several hearings on the Order to show cause based upon said petition, this Court caused the matter to be placed "off calendar" for the purpose of permitting the

trustee in bankruptcy to hold a sale of said property.

3. That the net amount due and owing to your petitioner from the bankrupt, secured by said deed of trust, is the amount of \$64,944.07. That the basis for such figure is set forth in some detail in Exhibit "A" attached hereto and made a part hereof.

4. That the sale of the above-described property by the trustee in bankruptcy herein, has now been consummated, and the trustee has received from the escrow of such sale a sum in excess of the amount due and owing to your petitioner on its first deed of trust.

5. That your petitioner has made demand upon Frank M. Chichester, said trustee in bankruptcy, for the payment of said sum owing under said deed of trust, and said trustee has refused such demand.

6. That Russell B. Seymour and Daniel W. Gage, attorneys at law, who represent creditors in this matter, have stated generally that they oppose payment by the trustee to your petitioner of the amount claimed due under its deed of trust, or any amount.

Wherefore, your petitioner prays that an order be issued by this Court requiring Frank M. Chichester as trustee in bankruptcy of this estate, Russell B. Seymour, Daniel W. Gage, California By-Products, E. S. Haven, Armand J. Pihlblad, and Sonnett Supply Company to be and appear before this Court at a time and place to be fixed in said order

to show cause, if any there be, why this Court should not make its Order directing that the trustee in bankruptcy herein pay over to your petitioner, Bill Lepper Motors, Inc., forthwith the sum of \$64,944.07 cash.

/s/ ROBERT H. SHUTAN,
Attorney for Bill Lepper
Motors, Inc., Petitioner.

EXHIBIT A

To Reconstruction Finance Company.....	\$60,600.00	
Los Angeles County Taxes.....	2,657.08	
Legal services as of December, 1950.....	743.00	
Ventilators for building	618.00	
Insurance	791.20	
Interest (detailed breakdown will be shown upon request)	2,144.79	
Attorneys fees in enforcing beneficiary's rights under this trust deed.....	2,500.00	
		<hr/>
Total.....	\$70,054.07	\$70,054.07

Receipts:

Rent received from Consolidated Casting Co.	\$ 2,960.00	
Receipt from sale of 1946 Oldsmobile.....	650.00	
Receipt from sale of personal property.....	1,500.00	
		<hr/>
	\$ 5,110.00	5,110.00

\$64,944.07

Duly verified. [104]

[Endorsed]: Filed September 11, 1951, Referee.

[Title of District Court and Cause.]

ANSWER OF FRANK M. CHICHESTER,
TRUSTEE, IN OPPOSITION OF PETI-
TION OF BILL LEPPER MOTORS, INC.,
FOR ORDER DIRECTING TRUSTEE TO
PAY MONIES

Comes now the respondent, Frank M. Chichester, the duly qualified and acting Trustee in the above-entitled matter and appearing for himself alone, in answer to and in opposition to the petition of Bill Lepper Motors, Inc., a corporation, on file herein, does admit, deny and allege as follows:

I.

Answering the allegations contained in paragraphs 2 and 3 of the Petition on file herein, said respondent denies generally and specifically each and every allegation contained therein and the whole thereof.

For a First, Separate and Distinct Affirmative Defense to the Petition on File Herein, Respondent Does Allege as Follows:

I.

That on July 10, 1951, in the Courtroom of the Honorable Reuben G. Hunt, Referee in Bankruptcy, respondent, as trustee herein, did offer to sell, at public sale, the real property mentioned in the Petition of Bill Lepper Motors, Inc., on file herein, which [106] said real property is more fully de-

scribed in that certain Order of this Court, confirming the sale of said real property, dated July 27th, 1951. That at the time said real property was offered for sale the court, at the request of respondent herein, ordered Bill Lepper Motors, Inc., to announce in open court the amount which it claimed under a purported lien of a purported Trust Deed, which it held on said real property; that it was then and there announced that respondent herein could not intelligently accept bids for said real property until he knew the amount claimed by Bill Lepper Motors, Inc., out of any offered bid to satisfy the purported lien of the said purported Trust Deed of Bill Lepper Motors, Inc.; and your respondent stated further that he could not accept any future bids for said real property which was not high enough to cover the amount claimed by Bill Lepper Motors, Inc., plus taxes, plus administration expenses. That thereupon Bill Lepper Motors, Inc., announced in open court, that the amount due to it to fully satisfy its purported lien, as aforesaid, and which it would accept in full settlement of its purported lien under said purported Trust Deed was the sum of \$62,299.00, only.

II.

That thereupon your respondent stated that after estimating the taxes that he would be required to pay in order to sell the aforementioned real property free and clear, and after estimating administration expenses in this estate, and assuming that he might be required to pay said sum of \$62,299.00.

to Bill Lepper Motors, Inc., that respondent could not sell said real property free and clear for less than the sum of \$75,000.00. That thereafter, one Hugo E. Aleidis did bid \$75,000.00 for said property free and clear; and relying upon the statement of Bill Lepper Motors, Inc., as aforesaid, that it would claim only the sum of \$62,299.00 to satisfy the purported Trust Deed lien of said Bill Lepper Motors, Inc., your respondent recommended to the court that it confirm the sale of said real property, and relying upon said recommendation and the representations of Bill [107] Lepper Motors, Inc., as aforesaid, the court did confirm the sale of said real property for the sum of \$75,000.00 by appropriate order dated July 27th, 1951.

III.

That after the trustee and the aforementioned purchaser of said real property, Hugo E. Aleidis, entered into and opened an escrow with the Title Insurance and Trust Company for the purpose of consummating the aforementioned sale of real property, the trustee was informed that in order to clear the title to said real property, said Title Insurance and Trust Company would require Bill Lepper Motors, Inc., or someone on its behalf, to pay to said Title Insurance and Trust Company the sum of \$589.22 which said sum was demanded by said Title Insurance and Trust Company as payment for fees incurred by it in performing certain work upon the foreclosure proceedings which had previously been commenced by the said Bill Lepper Motors, Inc., upon the aforementioned purported Trust Deed.

That since Bill Lepper Motors, Inc., refused to pay said sum of \$589.22 to the Title Insurance and Trust Company, as demanded by them, and since the trustee found that it was necessary that said sum of \$589.22 be paid before a title clearance could be obtained on the aforementioned sale of real property, your trustee did pay to the Title Insurance and Trust Company on behalf of Bill Lepper Motors, Inc., the sum of \$589.22 for the purpose and upon the conditions as aforesaid.

IV.

That Bill Lepper Motors, Inc., by virtue of the foregoing facts is estopped from claiming more than the sum of \$62,299.00 from respondent, if it is determined that the claim of the said Bill Lepper Motors, Inc., and its lien are valid, and can be established. That furthermore, if Bill Lepper Motors, Inc., does establish its claim for \$62,299.00, said claim should be reduced by the sum of \$589.22, which sum your respondent was compelled to [108] pay on behalf of and for the benefit of Bill Lepper Motors, Inc., as aforesaid.

For a Second, Separate and Distinct Affirmative Defense to the Petition on File Herein, Respondent Does Allege as Follows:

I.

That on or about April 14, 1947, a certain chattel mortgage was executed by the bankrupt as mortgagor, in favor of Reconstruction Finance Corpora-

tion, as mortgagee, which said chattel mortgage covered and became a lien upon certain machinery and equipment, furniture, fixtures and appliances, belonging to the bankrupt, which said items of property were more particularly set forth in an exhibit attached to said chattel mortgage; that said chattel mortgage was security, in conjunction with a certain Deed of Trust executed by the bankrupt on real property, for the payment of an indebtedness in the principal sum of \$100,000.00. That said chattel mortgage was, at some time subsequent to its execution, assigned and transferred to Bill Lepper Motors, Inc.

II.

That your respondent is informed and believes and therefore alleges that at some time in 1950 the said Bill Lepper Motors, Inc., attempted to and purportedly did foreclose, under the terms of the aforementioned chattel mortgage, upon the machinery, equipment, furniture, fixtures and appliances at that time belonging to the bankrupt; and that at said foreclosure sale said personal property was purchased by Consolidated Casting Co. for the sum of \$1,500.00.

III.

That your respondent is informed and believes and therefore alleges that the foreclosure procedure and steps taken by Bill Lepper Motors, Inc., were not proper and in accordance with law and therefore said foreclosure was of no effect whatsoever; and [109] that the said Bill Lepper Motors, Inc., and Consolidated Casting Co., did, in effect, convert

to their own use, said property purportedly purchased by Consolidated Casting Co. at said foreclosure sale; that said property belongs to the bankrupt and the trustee herein, and is part of this bankrupt estate; that said property which was purchased at said foreclosure sale by Consolidated Casting Co., was of the value of \$20,000.00.

For a Third, Separate and Distinct Affirmative Defense to the Petition on File Herein, Respondent Does Allege as Follows:

I.

That the aforementioned Hugo E. Aleidis, when he did purchase from the trustee herein for the sum of \$75,000.00, the aforementioned real property mentioned in the petition of Bill Lepper Motors, Inc., was at the time of said purchase, and at all times herein mentioned, the agent of and acting on behalf of Bill Lepper Motors, Inc., the holders of the purported Trust Deed lien on said real property; and that when Hugo E. Aleidis took title to said real property, he, in effect, received title in the name of and on behalf of Bill Lepper Motors, Inc.

For a Fourth, Separate and Distinct Affirmative Defense to the Petition on File Herein, Respondent Does Allege as Follows:

I.

That prior to the time of the aforementioned purported chattel mortgage foreclosure sale, Bill Lepper Motors, Inc., took possession of the real prop-

erty and business of the bankrupt under its purported rights under the aforementioned purported Trust Deed and that at the time that Bill Lepper Motors, Inc., took possession, as aforesaid, there was located on said real property certain personal property, consisting of fluxes, oils, office furniture, equipment and other property of the estimated reasonable value of \$5,000.00, which said property was not subject to the alleged lien [110] of Bill Lepper Motors, Inc., and that all of said property was converted by the said Bill Lepper Motors, Inc., to its own use.

For a Fifth, Separate and Distinct Affirmative Defense to the Petition on File Herein, Respondent Does Allege as Follows:

I.

That said Bill Lepper Motors, Inc., acquired the obligation secured by said Deed of Trust and chattel mortgage from the Reconstruction Finance Corporation by arrangements made with the bankrupt for the purpose of taking over all of the assets of the bankrupt to the exclusion of creditors of the bankrupt. That the bankrupt was then insolvent. That the said Bill Lepper Motors, Inc., without any consideration passing to the bankrupt or its creditors, entered upon the said premises, took over all assets of the bankrupt including property not subject to the lien of said Reconstruction Finance Corporation obligation, secured to itself existing customers of the bankrupt and transferred said business to said Con-

solidated Casting Co. who since about November 1, 1950, has been operating said business at a substantial profit, the exact amount thereof being unknown to the petitioner. That said Consolidated Casting Co. at all times has been and now is an agent and alter ego of said Bill Lepper Motors, Inc.

For a Sixth, Separate and Distinct Affirmative Defense to the Petition on File Herein, Respondent Does Allege as Follows:

I.

That at the time the said Bill Lepper Motors, Inc., acquired the aforementioned purported Deed of Trust and the obligation which it secured, from Reconstruction Finance Corporation, the said Bill Lepper Motors, Inc., was acting as the agent for and on behalf of the bankrupt, Superior Casting Company, Inc.

Wherefore, respondent prays: [111]

1. That petitioner, Bill Lepper Motors, Inc., take nothing by its petition;
2. That an order be made adjudging and decreeing that the Trust Deed upon which Bill Lepper Motors, Inc., asserts its claim is null and void and of no effect;
3. That an order be made adjudging and decreeing that Bill Lepper Motors, Inc., is indebted to the bankrupt estate in an amount equal to the personal property converted by it as a result of the aforementioned chattel mortgage foreclosure sale;

4. That an order be made adjudging and decreeing and setting forth the respective rights of the parties hereto to the funds in the hands of the trustee, received by the trustee, as the purchase price for the real property mentioned in the Petition of Bill Lepper Motors, Inc., on file herein;

5. For such other and further relief as to the court may seem proper in the premises.

EHRlich AND BLONDER,

By /s/ DAVID BLONDER,

Attorneys for Frank M.

Chichester, Trustee.

Duly verified.

Affidavit of service by mail attached. [112]

[Endorsed]: Filed September 25, 1951, Referee.

[Title of District Court and Cause.]

MOTION TO DISMISS

Under Rule 12, Federal Rules of Civil Procedure

Come now Daniel W. Gage, on behalf of himself and as attorney for California By-Products Corporation, and Russell B. Seymour, on behalf of himself and as attorney for E. S. Haven, Armand J. Pihlblad and Sonnett Supply Company, and move that the petition for order directing trustee to pay money, filed herein, by Bill Lepper Motors, Inc., be dismissed under the provision of Rule 12

(b) (6) of the Federal Rules of Civil Procedure, on the ground that said petition fails to state a claim upon which relief can be granted against any of the parties now appearing.

Dated the 25th day of September, 1951.

/s/ DANIEL W. GAGE,

Respondent and as Attorney for California By-Products Corporation.

/s/ RUSSELL B. SEYMOUR,

Respondent and as Attorney for E. S. Haven, Armand J. Pihlblad and Sonnett Supply Company.

Affidavit of Service by Mail attached.

[Endoresd]: Filed September 26, 1951, [114] Referee.

[Title of District Court and Cause.]

PETITION

To the Hon. Reuben G. Hunt, Referee in Bankruptcy in the Above Matter:

Come now Russell B. Seymour and Daniel W. Gage, and respectfully call to the attention of the court the following matters:

That Daniel W. Gage is a creditor of the above-named bankrupt and is attorney for California By-Products Corporation, a creditor with a substantial claim, filed herein; that Russell B. Seymour

is attorney for E. S. Haven, Armand J. Pihlblad and Sonnett Supply Company, each of which has a claim against the bankrupt; that Russell B. Seymour, pursuant to order of this court, was attorney for Leslie S. Bowden, the receiver herein.

At various times, examinations under section 21(a) and otherwise under the provisions of the Bankruptcy Act have been had, the same being conducted partially by Russell B. Seymour and the remainder by David Blonder, attorney for Frank M. Chichester, [116] trustee herein; that the election of Frank M. Chichester as trustee was the result of various claims voted by David Blonder, the largest of which claims was the claim asserted by Federated Metals, the credit manager of which was and is one George Kay, who handled the negotiations of Federated Metals with the bankrupt.

From the testimony which has been adduced, it appears that in the middle part of 1950 the bankrupt was in serious financial difficulties, and the operation was being run by a creditors' committee, the chairman of which was George Kay, who represented the said Federated Metals, in connection with its claim against the bankrupt. That thereupon, a voting trust was created whereby the said George Kay was to vote said stock for the benefit of the creditors. Subsequent thereto, the then legal and beneficial owners of said stock executed a written duplicate agreement whereby the said George Kay could dispose of said stock in any manner he desired for the benefit of the creditors of the bankrupt. Sometime during the latter part of September, 1950,

an offer was made to George Kay to purchase the stock held by him for the benefit of the creditors for the sum of \$15,000, the funds derived from the sale to be used to make the R.F.C. loan current, to pay the creditors a percentage of the amount owed them and for operating capital. This offer was refused by Kay and by Mr. John Gray, who then appeared to be the sole owner of all the shares of stock of the bankrupt subject to the voting trust vested in Kay, and the statement was made by both Kay and Gray that the sale would not be made because Kay no longer had the power to sell the stock, as Kay and Gray between themselves had abrogated the voting trust and the transfer of shares to Kay by Gray, without consultation with or notification to any of the creditors of the bankrupt.

Thereupon, in the first part of October, 1950, one Bill Lepper acting for himself or Bill Lepper Motors, Inc., a [117] corporation, of which Bill Lepper had control, entered into negotiations with John Gray, the then president and sole stockholder of the bankrupt, for the purpose of acquiring the assets of the bankrupt to the exclusion of the creditors of the bankrupt by the purchase of a then existing obligation held by Reconstruction Finance Corporation against the assets of the bankrupt, with the intention that the security held in connection with that obligation would be foreclosed at a price considerably less than the value of the assets.

Then Lepper or Bill Lepper Motors, Inc., as the case may be, thereupon acquired the obligation held by Reconstruction Finance Corporation. Shortly

thereafter, Lepper entered into the premises of the bankrupt and took over the business of the bankrupt, including various items not involved in the security held by Reconstruction Finance Corporation, and continued the operation of the business of the bankrupt under the name of Consolidated Casting Company. At the same time, Lepper gave notice to customers of the bankrupt that the latter was out of business. Thereafter, a purported foreclosure was had of the physical equipment of the bankrupt secured by chattel mortgage, whereby the physical equipment of the value of at least \$15,000 was purchased by said Consolidated Casting Company. Other bids had been made by third parties to the amount of at least \$9,000, but same were withdrawn after said Bill Lepper or Consolidated Casting Company paid to the other bidders the sum of \$1,000, in consideration of withdrawing from the bidding. A credit in the amount of \$1,500 was given against the obligation held by Lepper as the result of such sale. The real property, secured by a deed of trust, was sold by the trustee in bankruptcy herein for the sum of \$75,000, said sale being made to one Hugo E. Aleidis, as agent for said Lepper.

Immediately after Lepper went into possession of the [118] premises of the bankrupt, he caused a lease to a portion of the premises (approximately $\frac{1}{3}$ thereof) to be executed in favor of said Consolidated Casting Company for a period of five years from date thereof. At the time of the sale held by the trustee in bankruptcy of the real property herein referred to, requests were made by the un-

dersigned that said sale not be held until there could be a determination of the rights of Consolidated Casting Company under the provisions of said purported lease. Objections to the suggestion were made by Lepper, and the property was offered for sale subject to the lease.

It was then and now is the opinion of the undersigned that said property would have brought a considerably higher price if it would have been offered free and clear of the lease to Consolidated Casting Company. The effect of the sale was to eliminate from bidding any person who desired to use all of the premises prior to the expiration of the lease. It is the contention of the undersigned that the acquisition of the property and of the encumbrance held by Reconstruction Finance Corporation by Lepper was for the purpose of hindering, delaying and defrauding creditors of the bankrupt, and that the acts performed by said George Kay as credit manager for said Federated Metals, while acting as chairman of the creditors' committee, were overt acts which contributed directly to the course of conduct by Lepper.

From the time Leslie S. Bowden was appointed receiver and your petitioner, Russell B. Seymour, his attorney, examinations were had of various individuals with an idea of procuring for the estate as many assets as possible, it appeared that there was serious evidence of fraud between the various parties; and your petitioner Russell B. Seymour attempted to file with this Honorable Court a petition setting forth his findings and attempting to

restrain the sale of the real property belonging to the bankrupt under the deed of trust. Your petitioner Russell B. Seymour [119] was advised it was not proper for him to file such a document but that the action contemplated therein should be brought by the trustee when appointed.

When Frank M. Chichester was appointed trustee herein, the file in said case was turned over to the said Frank M. Chichester and David Blonder, his attorney, with the proposed petition, large portions of which have been incorporated in the answer filed at this late date.

Your petitioners herein, both before and after the appointment of the trustee, have constantly alleged that the foreclosure of and the acquisition of the deed of trust and chattel mortgage were intrinsically fraudulent and a fraud upon the creditors; and their attempts to present their case were constantly thwarted by the trustee and his attorney.

That the petition of Bill Lepper Motors, Inc., initiated against the trustee for payment of amounts assertedly due it, was set for hearing on September 20, 1951, but as late as September 18, 1951, no steps had been taken by the trustee or his counsel for the examination of any of the witnesses above referred to—this being in spite of oral direction made by Referee Benno M. Brink at a hearing had on or about August 17, 1951, that steps should be taken immediately by the trustee and his counsel to ascertain the facts pertaining to the contentions made by the undersigned. That on or about the said 18th day

of September, 1951, petitioners orally demanded that the trustee should take steps to conduct the examinations indicated.

Thus, it is the contention of the undersigned that appropriate legal steps be taken against all participants to preserve the assets of the estate of the bankrupt, and it is further the contention of the undersigned, by reason of the foregoing, that the present trustee and his attorney represent interests which are adverse to the estate herein and its [120] creditors generally, or that their actions have been so dilatory that proper parties be appointed to proceed in the name of the trustee to conserve the assets of this estate.

Wherefore, it is prayed that the Court will take such action as to it may appear proper.

/s/ DANIEL W. GAGE,

Attorney for California

By-Products Corporation.

/s/ RUSSELL B. SEYMOUR,

Attorney for E. S. Haven, Armand J. Pihlblad and
Sonnott Supply Company.

[Endorsed]: Filed September 27, 1951, [121]
Referee.

[Title of District Court and Cause.]

ORDER AUTHORIZING CREDITORS TO
PRESENT DEFENSES AND CLAIMS IN
BEHALF OF THE ESTATE

On oral application made by Daniel W. Gage on behalf of California By-Products Corporation, a creditor herein, and Russell B. Seymour on behalf of E. S. Haven, Armand J. Pihlblad and Sonnett Supply Company, creditors herein, for an order granting leave to said creditors to make a defense to the claim or claims asserted herein by Bill Lepper Motors, Inc., to certain funds, to wit, approximately \$64,944.07, presently held by the trustee as a result of the sale of the real property of the bankrupt, and good cause appearing therefor,

Now, therefore, on motion of said Daniel W. Gage and Russell B. Seymour, as attorneys, respectively, for said creditors, the trustee being present in court and represented by David Blonder and no objections having been made,

Now, Therefore, It Is Ordered that the above-named creditors or any of them may through their respective attorneys or otherwise file such answer and make such defenses and present [122] such claims against said Bill Lepper Motors, Inc., as to them appear proper, with the proviso that such recovery or benefit as may be derived through such defenses or claims presented by such creditors or

any of them shall be for the benefit of the estate herein.

Dated this 28th day of Sept., 1951.

/s/ REUBEN G. HUNT,
Referee in Bankruptcy.

Approved as to form:

.....
DAVID BLONDER,
Attorney for the Trustee
Herein.

DANIEL W. GAGE and
RUSSELL B. SEYMOUR,
By /s/ RUSSELL B. SEYMOUR,
Attorneys for Creditors.

Receipt of copy acknowledged.

[Endorsed]: Filed September 28, 1951, [123]
Referee.

[Title of District Court and Cause.]

ANSWER AND COUNTERCLAIM
FILED BY CREDITORS

To the Honorable Reuben G. Hunt, Referee in
Bankruptcy:

Pursuant to order of the court heretofore made,
come now California By-Products Corporation, rep-
resented by Daniel W. Gage, and E. S. Haven,

Armand J. Pihlblad and Sonnett Supply Company, represented by Russell B. Seymour, and file this answer and counterclaim in opposition to the petition of Bill Lepper Motors, Inc., a California corporation, for an order directing the trustee to pay money, and deny and allege as follows, to wit:

1. Admit the allegation of paragraph 1.
2. Admit that the petitioner is the apparent holder, owner and beneficiary of said deed of trust, but deny that the petitioner is entitled to any payment by reason thereof, and herein incorporate by reference all matters hereinafter stated by way of counterclaim or affirmative defense.
3. Deny each of the matters stated in paragraph 3.
4. Admit each of the allegations contained in paragraph 4. [125]
5. Admit each of the allegations contained in paragraph 5.
6. Admit each of the allegations contained in paragraph 6.

And for a First and Further Affirmative Defense and by Way of Counterclaim, Petitioners Allege as Follows:

1. That the obligation for which said deed of trust is assertedly security was likewise secured by that certain chattel mortgage referred to in the petition, executed by the bankrupt in favor of the Re-

construction Finance Corporation, assignor of the petitioner, Bill Lepper Motors, Inc., which said chattel mortgage was dated April 14, 1947, and was recorded on May 2, 1947, in Book 24540, Page 150, of Official Records in the office of the County Recorder of Los Angeles County.

2. These answering creditors are informed and believe, and based upon said information and belief allege that on or about July 17, 1950, George Kay was credit manager of Federated Metals, a creditor herein, and chairman of a creditors' committee previously formed consisting of creditors of the bankrupt, and was the voting trustee of 201 shares of the stock of the bankrupt, and on or about August 2, 1950, obtained authority to sell or otherwise dispose of or use said 200 shares of said stock for the benefit of creditors generally.

3. These answering creditors are informed and believe, and based upon said information and belief allege that on or about July 20, 1950, one John Gray, an attorney at law, became the owner of all of the stock of the bankrupt, subject to the rights of said George Kay, as trustee aforesaid.

4. That on or about September 26, 1950, an offer was made to Gray and Kay of \$15,000 for 200 shares of the stock of the bankrupt, said \$15,000 to be used as follows: (a) \$4,400 to make current the obligation of the bankrupt to the Reconstruction Finance Corporation; (b) to make a payment on account to [126] creditors of the bankrupt; and (c)

the balance to be used for operating purposes. This offer was not accepted.

5. That on or about October 5, 1950, the above offer was renewed, and again it was rejected.

6. That on or about October 12, 1950, Gray, in the presence of William S. Lepper, sometimes known as Bill Lepper, stated to Kay and others that said Bill Lepper was a client of Gray and that Lepper was desirous of paying off the creditors of the bankrupt for a few cents on the dollar, but no firm offer was made. On October 13, 1950, Lepper and Gray again stated that they would make a firm offer to pay off the creditors but first desired to audit the books of the bankrupt.

7. These answering creditors are informed and believe, and based upon said information and belief allege that at all times material herein said William S. Lepper was the principal and controlling stockholder of the petitioner, Bill Lepper Motors, Inc., a corporation.

8. These answering creditors are informed and believe, and based upon said information and belief allege that on or about October 12, 1950, Gray requested the Reconstruction Finance Corporation that its obligation be transferred to the petitioner. The Reconstruction Finance Corporation demanded that written authorization be given by the bankrupt that such transfer be made, and such authorization, signed by Gray as president of the bankrupt, was given to Reconstruction Finance Corporation, which

then transferred its obligation to the petitioner, Bill Lepper Motors, Inc.

9. These answering creditors are informed and believe, and based upon said information and belief allege that on or about October 16, 1950, the petitioner took over the entire business of the bankrupt, including certain personal property not covered by said chattel mortgage of the value of about [127] \$5,000, changed the locks to the portion of the premises occupied by the bankrupt, hired the general manager of the bankrupt, one Norman Sather, and commenced to sell products to customers of the bankrupt.

10. These answering creditors are informed and believe, and based upon said information and belief allege that in the latter part of October, 1950, or the early part of November, 1950, the exact time being unknown to these answering creditors, the petitioner purportedly executed a lease of the portion of the premises occupied by the bankrupt prior to October 16, 1950, to Consolidated Casting Company, an adjunct and instrumentality of said William S. Lepper and the petitioner, for a period of five years and surrendered the business of the bankrupt to said Consolidated Casting Company, which since that time has been operating the business of the bankrupt on said premises at a substantial profit, the exact amount thereof being unknown to these answering creditors but known to the petitioner. Upon information and belief, such amount is alleged to be at least \$5,000 per month.

11. These answering creditors are informed and believe, and based upon said information and belief allege that the petitioner immediately commenced a foreclosure of said chattel mortgage, and during December, 1950, purported to hold a sale of the personal property of the bankrupt pursuant to the provisions of said chattel mortgage. The reasonable value of said personal property was the sum of approximately \$20,000. At said sale, certain bidders made an opening bid on the said property in the amount of \$5,000, which bid was increased by the petitioner or its nominee and the opening bidder in successive advances of \$500 each until a bid of \$9,000 was made by the original bidder. At this point the petitioner or its agent paid to the original bidder the sum of \$1,000 in consideration of the original bidder's [128] withdrawing his bid and refraining from further bidding. All previous bids were withdrawn and another bid in the amount of \$1,500 was made by the petitioner or its nominee and the property was purportedly sold to the petitioner or its nominee for the sum of \$1,500, in which amount the petitioner is endeavoring to credit the obligation of the bankrupt to the petitioner.

12. Immediately thereafter the petitioner declared a default under the provisions of said deed of trust, and as the result thereof a sale of the real property of the bankrupt was set to be held on or about March 14, 1951.

13. An involuntary petition in bankruptcy was filed against the bankrupt herein on February 19,

1951, as the result of which and various orders restraining the sale of said property by Title Insurance and Trust Company, the trustee under said deed of trust, a sale of the said real property was consummated by Frank M. Chichester, trustee in bankruptcy herein, free and clear of the claim of the petitioner, any such claim being transferred to the proceeds of such sale now in possession of said trustee in bankruptcy.

14. These answering creditors are informed and believe, and based upon said information and belief allege that at said sale by the trustee in bankruptcy, the said real property was offered subject to the effect of the claim of the purported lease made by the petitioner to said Consolidated Casting Company for a period of five years from about November, 1950. At said sale there was only one bidder, to wit, one Hugo E. Aleidis, who then and there was and ever since has been the agent and dummy of the petitioner. Said bid was in the amount of \$75,000, same being the minimum amount estimated by the trustee in bankruptcy sufficient to pay reasonable costs of administration, costs of sale and asserted claims of lien against the real property. Said Aleidis had been empowered by the petitioner to bid as high as \$81,000 for [129] the real property.

15. These answering creditors are informed and believe, and based upon said information and belief allege that at said sale an effort was made by these answering creditors to permit the said real property to be sold only after the validity of the lease claimed

by Consolidated Casting Company should be determined, but such effort was strenuously and successfully opposed by the petitioner. By reason of the facts that Consolidated Casting Company was in possession of the portion of the premises covered by its purported lease and that a determination of the validity of said lease would have required extended litigation, it was impossible to procure any other bidder for said property although these answering creditors are informed and believe, and based upon said information and belief allege that said property could have been sold free and clear for an amount in excess of \$90,000.

16. That each and all of the acts performed by the petitioner were performed with the purpose and intent that the creditors of the bankrupt would receive nothing from the assets of the bankrupt and that the petitioner would be able to acquire the assets and business of the bankrupt for less than a fair value.

Wherefore, these answering creditors pray that the following orders be made:

1. Adjudging that the petitioner is entitled to nothing.

2. Requiring the petitioner to account to the trustee in bankruptcy herein for all profits earned by the petitioner and Consolidated Casting Company or either of them since October 16, 1950.

3. Requiring the petitioner to pay over to the trustee the reasonable value of any and all personal

property taken over by the petitioner, not subject to the lien of said chattel mortgage. [130]

4. Granting such other and further relief as may be proper.

DANIEL W. GAGE and

RUSSELL B. SEYMOUR,

By /s/ RUSSELL B. SEYMOUR,

Attorneys for Answering

Creditors.

Duly verified.

[Endorsed]: Filed October 1, 1951, [131] Referee.

[Title of District Court and Cause.]

PETITION OF TRUSTEE FOR LEAVE TO
COMPROMISE CONTROVERSY

To the Honorable Reuben G. Hunt, Referee in
Bankruptcy:

The petition of Frank M. Chichester respectfully
represents:

I.

That your petitioner is the duly qualified and acting trustee of the estate of the above-named bankrupt.

II.

That included in the original assets of the above bankrupt at the time said bankrupt was adjudicated a bankrupt, was a certain parcel of real property

located at 1601 East El Segundo Boulevard, El Segundo, California. That said real property was encumbered by a Deed of Trust originally issued in favor of Reconstruction Finance Corporation and subsequently assigned and transferred to Bill Lepper Motors, Inc., a corporation. [134]

III.

On June 14, 1951, this court made its order directing the receiver, or the trustee herein, to sell said real property free and clear of all liens, and free and clear of the aforementioned lien and Deed of Trust held by Bill Lepper Motors, Inc., and further ordering, inter alia, that such liens as may be possessed by Bill Lepper Motors, Inc., be transferred to the proceeds to be received from a sale of said real property; and further ordering that the trustee could by subsequent appropriate proceedings, obtain a determination by this court of the validity, priority, and extent of any lien claimed by the said Bill Lepper Motors, Inc., and the trustee could present for determination any defenses or grounds which he might possess, this court expressly reserving jurisdiction to determine said matters.

IV.

Pursuant to the aforesaid order of June 14, 1951, the trustee did sell said real property for the sum of \$75,000.00, which sale was confirmed by this court on July 27, 1951. Thereupon, on September 11, 1951, Bill Lepper Motors, Inc., did file its petition requesting this court for its order directing the Trustee to pay to Bill Lepper Motors, Inc., the

sum of \$64,944.07, which sum Bill Lepper Motors, Inc., contended was due to it from the funds in the hands of the trustee which the trustee had obtained from the sale of the real property as aforesaid, and which sum of \$64,944.07 the said Bill Lepper Motors, Inc., contended was due to it under the Deed of Trust which it had held on said real property, as aforesaid.

V.

That to said petition of Bill Lepper Motors, Inc., your Trustee filed an answer denying the material allegations set forth therein and setting forth six affirmative defenses by way of counterclaim. Your trustee has, and is now resisting the claim of [135] the said Bill Lepper Motors, Inc., as set forth in his petition. That hearings on said petition and the Trustee's answer thereto have been and now are pending before this court.

VI.

That during the course of said proceedings before this court an offer to compromise the said controversy has been made as follows: (a) Consolidated Casting Co., a corporation, has offered to pay to the Trustee herein the sum of \$20,000.00 in cash, (b) Bill Lepper Motors, Inc., has offered to reduce by \$1,500.00 the amount which it is claiming from the Trustee herein under the petition filed by it and which is now pending before this court, and (c) the Trustee herein is to pay to Bill Lepper Motors, Inc., out of funds in his hands, the sum of \$63,444.00, in full settlement of all the claims of the said Bill Lepper Motors, Inc., and in full settlement of all

claims of the Trustee against the said Bill Lepper Motors, Inc., and against Consolidated Casting Co. (provided, however, that this shall not constitute a release of the trustee's claim of \$530.29 against Consolidated Casting Company for rent due to the Trustee). It is proposed that the aforementioned sum of \$63,444.00 is to be paid by the Trustee to Bill Lepper Motors, Inc., upon the order approving this compromise becoming final. And it is proposed that upon payment of said sum to Bill Lepper Motors, Inc., the said Bill Lepper Motors, Inc., will assign to the Trustee herein all the right, title and interest of Bill Lepper Motors, Inc., in and to the aforementioned indebtedness and Deed of Trust.

That attached hereto and marked Exhibit A and incorporated herein by reference as though set forth in full, is a copy of the written offer submitted and proposed to the Trustee by Consolidated Casting Co.

VII.

That your Trustee believes and is of the opinion that it [136] would be for the best interests of the estate to accept the aforementioned offer of compromise for the following reasons:

A. It is the Trustee's opinion that the strongest portion of the various contentions which he advanced as defenses to the Bill Lepper Motors, Inc., claim was that portion with dealt with the Trustee's contention that on December 7, 1950, Bill Lepper Motors, Inc., foreclosed upon a chattel mortgage upon personal property belonging to Superior Casting Company, the Bankrupt herein; that said chattel

mortgage was held by Bill Lepper Motors, Inc., by assignment from Reconstruction Finance Corporation, and was security for the same debt secured by the Deed of Trust which is the basis for the Bill Lepper Motors, Inc., claim for \$64,944.07; that said foreclosure sale was fraudulent and false and improperly conducted; that bidding was stifled at said sale; that the creditors of Superior Casting Company and the Trustee herein were damaged by said improper foreclosure sale to the extent that the credit that Bill Lepper Motors, Inc., should have allowed against its claim under the Trust Deed as aforesaid, should not have been the sum of \$1,500.00 but should have been the actual value of the personal property foreclosed upon by Bill Lepper Motors, Inc., by said chattel mortgage foreclosure sale, plus certain supplies converted at said sale. That said personal property was carried on the books of the bankrupt at a net value, after depreciation, of approximately \$28,000.00. That your trustee has been advised by persons who attended said foreclosure sale that they were prepared to bid to \$16,000.00 or \$17,000.00 for the property at said foreclosure sale. That on this particular phase of the Trustee's defense to the Bill Lepper Motors, Inc., claim, the Trustee could not recover more than the actual value of the property sold at the foreclosure sale, less the sum of \$1,500.00, which Bill Lepper Motors, Inc., has already credited on its claim; that from all the Trustee has been [137] able to learn, the value of said property as of December 7, 1950, was between \$15,000.00 and \$20,000.00.

That by accepting said offer of compromise the Trustee will obtain for this Bankrupt estate an additional sum of \$21,500,00 for creditors over and above any other assets of the bankrupt which will come into his hands.

That it is the opinion of the trustee that if he were successful in establishing all of the foregoing facts that on this particular phase of his defense to the claim of Bill Lepper Motors, Inc., that the Trustee could only recover a maximum amount equal to the actual value of the aforementioned property sold at the foreclosure sale; and the Trustee is of the opinion that evidence which show that the value of said property was somewhere between \$15,000.00 and \$20,000.00, and that the Trustee is of the opinion that on this particular phase of the litigation he could, at best, recover for the estate no more than \$20,000.00.

B. That it is the Trustee's opinion that the other and remaining defenses asserted by him in opposition to the claim of Bill Lepper Motors, Inc., as aforesaid, are defenses which are based upon certain theories of law and certain facts which would require the trustee to establish, among other things, the following:

1. Fraudulent intent in transactions between Bill Lepper Motors, Inc., and officers of Superior Casting Company.

2. The theory of a merger having been created by virtue of the fact that Hugo Aleidis did purchase the aforementioned real property on behalf of Bill Lepper Motors, Inc.

3. The theory of a merger having been created by virtue of the fact that when Bill Lepper Motors, Inc., purchased the aforementioned Deed of Trust from [138] Reconstruction Finance Corporation, the said Bill Lepper Motors, Inc., did purchase said Deed of Trust for and on behalf of Superior Casting Company.

4. The legal theory that when Bill Lepper Motors, Inc., foreclosed upon the chattel mortgage, as aforesaid, it thereby waived and eliminated the lien of its Deed of Trust upon the aforementioned real property.

5. The theory that the entire transaction wherein Bill Lepper Motors, Inc., acquired the note, Deed of Trust and chattel mortgage from Reconstruction Finance Corporation was fraudulent and to the detriment of the creditors of the bankrupt, by reason of the fact that Bill Lepper Motors, Inc., did, by such transactions, attempt to obtain the assets of the bankrupt, in fraud of the bankrupt's creditors.

6. The theory of the estoppel, wherein the trustee contends that since on previous court hearings Bill Lepper Motors, Inc., has stated that it was only entitled to the sum of \$62,299, that, therefore, it should not be entitled to any more than said sum at the present time. (In this respect, it should be noted that the offer of compromise proposes that Bill Lepper Motors, Inc., should reduce its present claim by the sum of \$1,500.00, and would thereupon mean that the trustee would pay to Bill Lepper

Motors, Inc., the sum of \$63,444, which is closer to the sum of \$62,299.00, being the amount which the trustee [139] contends is the amount originally claimed by Bill Lepper Motors, Inc.)

VIII.

That in the opinion of the trustee, the aforementioned contentions and defenses asserted by him are of such a nature as to require extended litigation and are of such a nature as might not be allowed by this court for the reason that it might well be that this court might not agree with the particular legal theories as advanced by the trustee and with the interpretation of the law as contended by the trustee, as aforesaid. That in the opinion of the trustee, it is possible that the court might disagree with all of the contentions of the trustee and the trustee would recover nothing by this litigation. That by the aforementioned offer of compromise, the trustee will obtain for this estate an additional sum of \$21,500.00 for creditors. That it is possible that after extended litigation, this court might agree with the trustee to the effect that the aforementioned foreclosure sale was fraudulent and that if the court did so agree with the trustee, it is the opinion of the trustee he could recover on such particular phase of the litigation somewhere between \$15,000.00 and \$20,000.00. That if this court did agree with all of the remaining allegations of the trustee, this trustee would be successful in eliminating entirely the whole amount claimed by Bill Lepper Motors, Inc., and that if the trustee were successful on all

points of the litigation the trustee would then be recovering for the estate a sum amounting to \$64,944.07, but in order to make such complete recovery for the estate, it would be necessary for the trustee to establish all of the aforementioned theories and facts. That it is possible that upon extended litigation, that this court might disagree with all of the theories and facts presented by the trustee and that the trustee might recover nothing for this estate. That it is the [140] opinion of the trustee, therefore, that the opportunity to now receive a sum equal to \$21,500.00 for creditors of this estate is one that should be taken by the trustee, in order to obtain such a sum of money for the creditors at the present time, rather than to continue protracted litigation, the results of which, in the opinion of the trustee, are uncertain.

Wherefore, your petitioner prays that a meeting of the creditors of the above-entitled bankrupt be called herein, and that an order be made by this court thereupon granting to the petitioner leave and permission to accept the aforementioned offer to compromise the controversy as set forth herein.

/s/ FRANK M. CHICHESTER,
Trustee-Petitioner.

EHRlich AND BLONDER,

By /s/ DAVID BLONDER, [141]
Attorneys for Petitioner.

EXHIBIT A

October 11, 1951.

David Blonder.

Dear Mr. Blonder:

This is to confirm the fact that I as Attorney for the Consolidated Casting Company offered the sum of \$20,000.00 to settle all the controversies that exist in the Bankruptcy proceedings wherein the Superior Casting Company is the Bankrupt.

This is confirmation subject to Court Order and I will obtain that \$20,000.00 and have it available when and if the Court confirms this offer.

It is understood that this will settle and terminate all claims that are involved in the Bankruptcy proceeding.

Yours truly,

/s/ JAMES T. BYRNE.

Duly verified.

[Endorsed]: Filed Oct. 15, 1951, Referee. [142]

[Title of District Court and Cause.]

OBJECTIONS TO PROPOSED COMPROMISE

To the Honorable Reuben G. Hunt, Referee in Bankruptcy:

The undersigned, Russell B. Seymour, is attorney for E. F. Haven, Armand J. Pihlblad and Sonnet Supply Co., each of whom has a claim against the

above-named bankrupt, and Daniel W. Gage is attorney for California By-Products Corporation, a creditor of the above bankrupt.

On behalf of said creditors and each of them, the following objections are hereby presented in connection with the Petition of Trustee for Leave to Compromise Controversy, hearing of which is noticed to be held on October 30, 1951, at the hour of 10:00 o'clock a.m. Grounds for said objections are as follows, to wit:

I.

That the fraudulent sale under the chattel mortgage referred to in said petition absolutely eliminates any deficiency in favor of the obligation now held by Bill Lepper Motors, Inc., to wit: the asserted claim of Bill Lepper Motors, Inc., based on the [144] deed of trust referred to in said petition of the Trustee.

II.

That the Trustee has failed to examine fully, or in some cases at all, various witnesses who have knowledge of the asserted fraud on the part of Bill Lepper Motors, Inc., et al., to wit: Les Scherer, Walter Smith, Norton Sather, one Falkenberg, President of Consolidated Casting Company, Harold J. Ackerman, George Kay, William Cullen, Homer Lewis and John Gray.

III.

That the Trustee was elected by claims represented by David Blonder, attorney for Federated Metals, credit manager for which was George Kay, who was chairman of the creditors' committee of

the bankrupt, against which persons causes of action arising out of the matters proposed to be compromised exist in favor of this estate, for reasons set out in Demand Upon Trustee That Actions Be Brought, the original of which has heretofore been served upon the Trustee and a copy of which is attached hereto and which by reference is made a part hereof.

IV.

That said proposed compromise is not in the best interests of the estate.

Wherefore, it is prayed that said Petition for Leave to Compromise Controversy be denied.

/s/ DANIEL W. GAGE,
Attorney for California
By-Products Corp.

/s/ RUSSELL B. SEYMOUR,
Attorney for E. F. Haven, Armand J. Pihlblad, and
Sonnet Supply Co. [145]

[Title of District Court and Cause.]

DEMAND UPON TRUSTEE THAT ACTIONS
BE BROUGHT

To: Frank M. Chichester, Trustee herein, and David
Blonder:

The undersigned, Russell B. Seymour, is attorney for E. F. Haven, Armand J. Pihlblad and Sonnet Supply Co., each of whom has a claim against the above-named bankrupt, and Daniel W. Gage is at-

torney for California By-Products Corporation, a creditor of the above bankrupt.

On behalf of said creditors and each of them, demand is hereby made that the Trustee will initiate and conduct actions against Bill Lepper Motors, Inc., Federated Metals, George Kay, and each of them in respect to the following matters and for the following reasons.

At various times during these proceedings, examinations under Section 21a and otherwise under the provisions of the Bankruptcy Act have been had herein, same being conducted partially by Russell B. Seymour and the remainder by David Blonder, attorney for Trustee herein.

From the testimony which has been adduced, it appears that in the middle part of 1950 the bankrupt was in financial difficulties [146] and that a creditors' committee was created, the chairman of which was George Kay, who represented said Federated Metals in connection with its claim against the bankrupt. Thereafter, substantially all, if not all, of the stock of the bankrupt was placed in the name of George Kay for the benefit of creditors, and with authority to vote said stock and to dispose of the stock for the benefit of creditors.

In September or October of 1950, one Bill Lepper, acting for himself or for Bill Lepper Motors, Inc., a corporation, of which Bill Lepper had control, entered into negotiations with the bankrupt for the purpose of acquiring the assets of the bankrupt to the exclusion of the creditors of the bankrupt by the purchase of a then existing obligation held by

Reconstruction Finance Corporation against the assets of the bankrupt, with the intention that the security held in connection with that obligation would be foreclosed at a price considerably less than the value of the assets.

In or about September of 1950, an offer was made to George Kay to purchase a portion of the stock held by him, for the sum of \$15,000.00, which amount would be used in connection with the operation of the business and the payment of creditors. This offer was rejected by Kay. Reconstruction Finance Corporation refused to transfer the obligation held by it against the assets of the bankrupt unless Kay would abrogate under said trust agreement. Kay, without consultation with or notification of creditors of the bankrupt rescinded the trust agreement. Lepper thereupon acquired the obligation held by Reconstruction Finance Corporation. Shortly thereafter, Lepper entered into the premises of the bankrupt and took over the business of the bankrupt, including various items not involved in the security held by Reconstruction Finance Corporation, and continued the operation of the business of the bankrupt under the name of Consolidated Casting Company. At the same time Lepper gave notice to customers of the bankrupt that the latter was out of business. Thereafter a purported foreclosure was had of the physical [147] equipment of the bankrupt secured by chattel mortgage, whereby the physical equipment of the value of at least \$15,000.00 was purchased by said Consolidated Casting Company. Other bids had been made by

third parties to the amount of at least \$9,000.00, but same were withdrawn after said Bill Lepper or Consolidated Casting Company paid to the other bidders the sum of \$1,000.00, in consideration of withdrawing from the bidding. A credit in the amount of \$1,500.00 was given against the obligation held by Lepper as the result of such sale. The real property, secured by a deed of trust, was sold by the trustee in bankruptcy herein for the sum of \$75,000.00, said sale being made to one Hugo E. Aleidis, as agent for Lepper.

Immediately after Lepper went into possession of the premises of the bankrupt, he caused a lease to a portion of the premises (approximately $\frac{1}{3}$ thereof) to be executed in favor of said Consolidated Casting Company for a period of five years from date thereof. At the time of the sale held by the trustee in bankruptcy of the real property herein referred to, requests were made by the undersigned that said sale not be held until there could be a determination of the rights of Consolidated Casting Company under the provisions of said purported lease. Objections to the suggestion were made by Lepper, and the property was offered for sale subject to the lease.

It was then and now is the opinion of the undersigned that said property would have brought a considerably higher price if it would have been offered free and clear of the lease to Consolidated Casting Company. The effect of the sale was to eliminate from bidding any person who desired to use all of the premises prior to the expiration of the

lease. It is the contention of the undersigned that the acquisition of the property and of the encumbrance held by Reconstruction Finance Corporation was for the purpose of hindering, delaying and defrauding creditors of the bankrupt, and that the acts performed by said George Kay as agent for said [148] Federated Metals, while acting as chairman of the creditors' committee, were overt acts which contributed directly to the course of conduct by Lepper. At said sale there was only one bidder, to wit: one Hugo E. Aleidis, who then and there was, and ever since has been the agent and dummy of Bill Lepper Motors, Inc. Said bid was in the amount of \$75,000.00, same being the minimum amount estimated by the Trustee in Bankruptcy sufficient to pay reasonable costs of administration, costs of sale and asserted claims of lien against the real property. Said Aleidis had been empowered by Bill Lepper Motors, Inc. to bid as high as \$81,000.00 for the real property.

Thereafter the said Bill Lepper Motors, Inc., endeavored to procure from the Trustee herein the sum of \$64,944.07 purportedly due it under the provisions of said Deed of Trust. Objections were made by the Trustee to said claim and the matter partially tried before this court at which time a proposed compromise made whereby said Consolidated Casting Company proposed to pay to the Trustee the sum of \$20,000.00 in cash and said Bill Lepper Motors, Inc., proposed to reduce its claim by the amount of \$1,500.00 in full settlement of all

claims that the parties might have one against the other.

It is the contention of the undersigned that said Federated Metals, acting through George Kay, and said George Kay individually, committed overt acts in connection with a scheme existing between said Bill Lepper Motors, Inc., and the Bankrupt whereby the said Bill Lepper Motors, Inc., was to acquire property of the bankrupt at an amount substantially less than its value and in a manner which would prevent the creditors of the bankrupt from obtaining any payment of their respective claims.

Further that the said persons are liable to the estate herein for among other things, the amount of \$15,000.00, being the sum that was offered for a portion of the stock of the bankrupt rejected by [149] said George Kay as chairman of the creditors committee of the creditors of the bankrupt.

Notice Is Hereby Given that unless appropriate action be commenced by the Trustee herein on or before November 1, 1951, a request will be made of the Bankruptcy Court that the creditors, of some of them, represented by the undersigned, be permitted to initiate and conduct such actions or other litigation as may be appropriate under the circumstances.

.....,
DANIEL W. GAGE,
Attorney for California
By-Products Corp.

.....
 RUSSELL B. SEYMOUR,

Attorney for E. F. Haven, Armand J. Pihlblad, and
 Sonnet Supply Co.

Duly verified.

[Endorsed]: Filed Oct. 30, 1951, Referee. [150]

—————
 [Title of District Court and Cause.]

DEMAND UPON TRUSTEE THAT ACTIONS
 BE BROUGHT

To: Frank M. Chichester, Trustee herein, and David
 Blonder:

The undersigned, Russell B. Seymour, is attorney for E. F. Haven, Armand J. Pihlblad and Sonnet Supply Co., each of whom has a claim against the above-named bankrupt, and Daniel W. Gage is attorney for California By-Products Corporation, a creditor of the above bankrupt.

On behalf of said creditors and each of them, demand is hereby made that the Trustee will initiate and conduct actions against Bill Lepper Motors, Inc., Federated Metals, George Kay, and each of them in respect to the following matters and for the following reasons.

At various times during these proceedings, examinations under Section 21a and otherwise under the provisions of the Bankruptcy Act have been had herein, same being conducted partially by Russell

B. Seymour and the remainder by David Blonder, attorney for Trustee herein.

From the testimony which has been adduced, it appears that in the middle part of 1950 the bankrupt was in financial difficulties [152] and that a creditors' committee was created, the chairman of which was George Kay, who represented said Federated Metals in connection with its claim against the bankrupt. Thereafter, substantially all, if not all, of the stock of the bankrupt was placed in the name of George Kay for the benefit of creditors, and with authority to vote said stock and to dispose of the stock for the benefit of creditors.

In September or October of 1950, one Bill Lepper, acting for himself or for Bill Lepper Motors, Inc., a corporation, of which Bill Lepper had control, entered into negotiations with the bankrupt for the purpose of acquiring the assets of the bankrupt to the exclusion of the creditors of the bankrupt by the purchase of a then existing obligation held by Reconstruction Finance Corporation against the assets of the bankrupt, with the intention that the security held in connection with that obligation would be foreclosed at a price considerably less than the value of the assets.

In or about September of 1950, an offer was made to George Kay to purchase a portion of the stock held by him, for the sum of \$15,000.00, which amount would be used in connection with the operation of the business and the payment of creditors. This offer was rejected by Kay. Reconstruction Finance Corporation refused to transfer the obliga-

tion held by it against the assets of the bankrupt unless Kay would abrogate under said trust agreement. Kay, without consultation with or notification of creditors of the bankrupt rescinded the trust agreement. Lepper thereupon acquired the obligation held by Reconstruction Finance Corporation. Shortly thereafter, Lepper entered into the premises of the bankrupt and took over the business of the bankrupt, including various items not involved in the security held by Reconstruction Finance Corporation, and continued the operation of the business of the bankrupt under the name of Consolidated Casting Company. At the same time Lepper gave notice to customers of the bankrupt that the latter was out of business. Thereafter a purported foreclosure was had of the physical [153] equipment of the bankrupt secured by chattel mortgage, whereby the physical equipment of the value of at least \$15,000.00 was purchased by said Consolidated Casting Company. Other bids had been made by third parties to the amount of at least \$9,000.00, but same were withdrawn after said Bill Lepper or Consolidated Casting Company paid to the other bidders the sum of \$1,000.00, in consideration of withdrawing from the bidding. A credit in the amount of \$1,500.00 was given against the obligation held by Lepper as the result of such sale. The real property, secured by a deed of trust, was sold by the trustee in bankruptcy herein for the sum of \$75,000.00, said sale being made to one Hugo E. Aleidis, as agent for Lepper.

Immediately after Lepper went into possession

of the premises of the bankrupt, he caused a lease to a portion of the premises (approximately $\frac{1}{3}$ thereof) to be executed in favor of said Consolidated Casting Company for a period of five years from date thereof. At the time of the sale held by the trustee in bankruptcy of the real property herein referred to, requests were made by the undersigned that said sale not be held until there could be a determination of the rights of Consolidated Casting Company under the provisions of said purported lease. Objections to the suggestion were made by Lepper, and the property was offered for sale subject to the lease.

It was then and now is the opinion of the undersigned that said property would have brought a considerably higher price if it would have been offered free and clear of the lease to Consolidated Casting Company. The effect of the sale was to eliminate from bidding any person who desired to use all of the premises prior to the expiration of the lease. It is the contention of the undersigned that the acquisition of the property and of the encumbrance held by Reconstruction Finance Corporation was for the purpose of hindering, delaying and defrauding creditors of the bankrupt, and that the acts performed by said George Kay as agent for said [154] Federated Metals, while acting as chairman of the creditors' committee, were overt acts which contributed directly to the course of conduct by Lepper. At said sale there was only one bidder, to wit: one Hugo E. Aleidis, who then and there was, and ever since has been the agent

and dummy of Bill Lepper Motors, Inc. Said bid was in the amount of \$75,000.00, same being the minimum amount estimated by the Trustee in Bankruptcy sufficient to pay reasonable costs of administration, costs of sale and asserted claims of lien against the real property. Said Aleidis had been empowered by Bill Lepper Motors, Inc., to bid as high as \$81,000.00 for the real property.

Thereafter the said Bill Lepper Motors, Inc., endeavored to procure from the Trustee herein the sum of \$64,944.07 purportedly due it under the provisions of said Deed of Trust. Objections were made by the Trustee to said claim and the matter partially tried before this court at which time a proposed compromise made whereby said Consolidated Casting Company proposed to pay to the Trustee the sum of \$20,000.00 in cash and said Bill Lepper Motors, Inc., proposed to reduce its claim by the amount of \$1,500.00 in full settlement of all claims that the parties might have one against the other.

It is the contention of the undersigned that said Federated Metals, acting through George Kay, and said George Kay individually, committed overt acts in connection with a scheme existing between said Bill Lepper Motors, Inc., and the Bankrupt whereby the said Bill Lepper Motors, Inc., was to acquire property of the bankrupt at an amount substantially less than its value and in a manner which would prevent the creditors of the bankrupt from obtaining any payment of their respective claims.

Further that the said persons are liable to the

estate herein for among other things, the amount of \$15,000.00, being the sum that was offered for a portion of the stock of the bankrupt rejected [155] by said George Kay as chairman of the creditors committee of the creditors of the bankrupt.

Notice Is Hereby Given that unless appropriate action be commenced by the Trustee herein on or before November 1, 1951, a request will be made of the Bankruptcy Court that the creditors, of some of them, represented by the undersigned, be permitted to initiate and conduct such actions or other litigation as may be appropriate under the circumstances.

/s/ DANIEL W. GAGE,
Attorney for California
By-Products Corp.

/s/ RUSSELL B. SEYMOUR,
Attorney for E. F. Haven, Armand J. Pihlblad, and
Sonnet Supply Co.

[Endorsed]: Filed Oct. 30, 1951, Referee. [156]

[Title of District Court and Cause.]

OBJECTIONS TO AND DISAPPROVAL OF
ORDER AUTHORIZING COMPROMISE
OF CONTROVERSY, FINDINGS OF FACT,
AND CONCLUSIONS OF LAW

To the Honorable Reuben G. Hunt, Referee in
Bankruptcy:

Come now California By-Products Corporation, by Daniel W. Gage, its attorney, and E. F. Haven, Armand J. Pihlblad and Sonnet Supply Co., by their attorney, Russell B. Seymour, and each of them pursuant to Rule 7a of this court, disapprove of and object to the proposed order authorizing compromise of controversy, findings of fact and conclusions of law served upon counsel November 9, 1951, in the following respects:

I.

The second paragraph appearing on page 1 of the Order should read as follows:

“It appearing that at said hearing the trustee was represented by his counsel, David Blonder; Bill Lepper Motors, Inc., was represented by its counsel, Robert Shutan; Consolidated Casting Co., was represented [157] by its counsel, James T. Byrne, and American Smelting and Refining Co., Federated Metals Division thereof, sometimes referred to as Federated Metals, an unsecured creditor of the bankrupt with a claim amounting to \$24,245.09 on which claim

David Blonder appears as attorney, appeared by George Kay, its credit manager; all of the aforementioned parties appearing in support of and in favor of the Trustee's petition to compromise," and

[In margin]: Disallowed.

II.

At the end of the first paragraph appearing on page 2, there should be added the following sentence:

"Said objecting creditors offered to adduce evidence in support of their objections and said offer was rejected by the court."

[In margin]: Denied.

III.

That the second paragraph appearing on page 2 should read as follows:

"Without the presentation of any evidence, the court makes its Findings of Fact, Conclusions of Law, and Order as follows."

[In margin]: Denied.

IV.

At paragraph II of Conclusions of Law on pages 4 and 5 should read as follows:

"That the facts alleged in the objections of E. F. Haven, Armand J. Pihlblad, Sonnet Supply Co. and California By-Products Co.,

and the evidence offered in support thereof, which evidence the court refused to receive, are insufficient to warrant a denial of the Trustee's petition for an order authorizing him to compromise the controversy in question, and [158] therefore, such objections should be overruled and denied."

[In margin]: Denied.

/s/ DANIEL W. GAGE,
Attorney for California
By-Products Corp.

/s/ RUSSELL B. SEYMOUR,
Attorney for E. F. Haven, Armand J. Pihlblad and
Sonnet Supply Co.

Affidavit of Service by Mail attached.

[Endorsed]: Filed Nov. 13, 1951, Referee. [159]

In the District Court of the United States, Southern
District of California, Central Division

In Bankruptcy No. 51,460-WB

In the Matter of:

SUPERIOR CASTING COMPANY, INC., a Cali-
fornia Corporation,

Bankrupt.

ORDER AUTHORIZING COMPROMISE OF
CONTROVERSY, FINDINGS OF FACT,
CONCLUSIONS OF LAW

The Trustee herein, Frank M. Chichester, having
heretofore filed his petition for an order authorizing

him to compromise a certain controversy existing between said Trustee and Bill Lepper Motors, Inc., a corporation, and Consolidated Casting Co., a corporation; and said petition having duly come on for hearing before the Honorable Reuben G. Hunt, Referee in Bankruptcy, on October 30, 1951, at the hour of 10:00 o'clock a.m., of which hearing at least ten (10) days notice by mail was given to the creditors herein, and

It appearing that at said hearing the Trustee was represented by his counsel, David Blonder; Bill Lepper Motors, Inc., was represented by its counsel, Robert Shutan; Consolidated Casting Co. was represented by its counsel, James T. Byrne; and American Smelting and Refining Co., an unsecured creditor of the bankrupt with a claim amounting to \$24,245.09, appeared for itself; all of the aforementioned parties appearing in support of and in favor of the Trustee's petition to compromise, [161] and Objections to the Trustee's petition for leave to compromise controversy having been filed on October 30, 1951, by E. F. Haven, an unsecured creditor of the bankrupt in the amount of \$1,286.64, and by Armand J. Pihlblad, an unsecured creditor in the amount of \$2,450.00, and by Sonnet Supply Co., an unsecured creditor in the amount of \$200.00, all of whom were represented at said hearing by their counsel Russell B. Seymour; and objections having also been filed on October 30, 1951, by California By-Products Corporation, an unsecured creditor of the bankrupt in the amount of \$10,-

349.07, which was represented at said hearing by its counsel Daniel W. Gage.

Now after a due hearing on said matter, the Court makes its findings of fact, conclusions of law and order thereon as follows:

Findings of Fact

I.

That Consolidated Casting Co., has offered to pay to the Trustee herein, and has in fact placed in the hands of the Trustee, the sum of \$20,000.00; and that Bill Lepper Motors, Inc., has agreed to reduce by the sum of \$1,500.00 its claim against the Trustee in the sum of \$64,944.07 which said claim is based upon the following figures:

To Reconstruction Finance Company.....	\$60,600.00	
Los Angeles County Taxes.....	2,657.08	
Legal services as of December, 1950.....	743.00	
Ventilators for building	618.00	
Insurance	791.20	
Interest (detailed breakdown will be shown upon request)	2,144.79	
Attorneys fees in enforcing beneficiary's rights under this trust deed.....	2,500.00	
	<hr/>	
Total.....	\$70,054.07	\$70,054.07

Receipts:

Rent received from Consolidated Casting Co.	\$ 2,960.00	
Receipt from sale of 1946 Oldsmobile.....	650.00	
Receipt from sale of personal property.....	1,500.00	
	<hr/>	
	\$ 5,110.00	5,110.00
		<hr/>
		\$64,944.07

II.

That as the results of the aforementioned payment by Consolidated Casting Co., and the afore-

mentioned reduction of claim by Bill Lepper Motors, Inc., this bankrupt estate will receive a net sum of \$21,500.00 in settlement of the controversy which is the subject of the Trustee's petition to compromise.

III.

That the Trustee, Consolidated Casting Co., Bill Lepper Motors, Inc., through their counsel, and American Smelting and Refining Co., an unsecured creditor of the bankrupt in the amount of \$24,245.09, all approved of and recommend that this Court approve of and authorize the Trustee to compromise the controversy which is the subject of the Trustee's petition herein; and all of said parties are of the opinion that it is proper and for the best interest of this bankrupt estate to accept and approve of said compromise.

IV.

That the unsecured creditors, E. F. Haven, Armand J. Pihlblad, and Sonnet Supply Co., unsecured creditors with claims totaling \$3,936.64, through their counsel, and California By-Products Co., an unsecured creditor with a claim of \$10,349.07, through its counsel, did object to the proposed compromise and did request this Court to deny the Trustee's petition to compromise the controversy.

V.

That this Court did offer to said objecting creditors, in lieu of a compromise of the matters set forth in the Trustee's petition, that said objecting

creditors could take over the litigation which was the basis of the offer of compromise, and that the Court then would not authorize the compromise, provided however, that as a condition of such action by this Court, said objecting creditors should guarantee to the Trustee and this bankrupt [163] estate that they would receive from such litigation at least the net minimum sum of \$21,500.00. That said objecting creditors, through their respective counsel, Russell B. Seymour and Daniel W. Gage, expressly refused to make such guarantee and further expressly refused to agree to indemnify the Trustee in the sum of \$21,500.00 or in any amount whatsoever, in the event the compromise was not authorized by this Court and said Trustee was ultimately unsuccessful in prevailing in the litigation which is the basis for the Trustee's petition to compromise.

VI.

That the matters set forth in Paragraphs I and III of the objections to Proposed Compromise are included in and are part of the issues raised in the litigation which the Trustee proposes to compromise, which issues are raised by the following pleadings on file herein: (a) Petition of Bill Lepper Motors, Inc., for order directing Trustee to pay money, (b) Answer of Frank Chichester, Trustee, in opposition to Petition of Bill Lepper Motors, Inc., for Order Directing Trustee to Pay Monies, and (c) Answer and counterclaim to petition of Bill Lepper Motors, Inc., filed by creditors California By-Products Co., E. F. Haven, Armand J. Pihlblad, and Sonnett Supply Co.

VII.

That the allegations contained in Paragraphs II and IV of the objections to proposed compromise are not true.

VIII.

That the allegations contained in Paragraphs I to VII of the Trustee's petition for leave to compromise controversy are true.

Conclusions of Law

I.

That the proposed compromise recommended by the Trustee is proper and for the best interest of this estate in bankruptcy.

II.

That the facts alleged in the objections of E. F. Haven, Armand J. Pihlblad, Sonnett Supply Co., and California By-Products [164] Co., and the evidence offered in support thereof are insufficient to warrant a denial of the Trustee's petition for an order authorizing him to compromise the controversy in question, and therefore, such objections should be overruled and denied.

III.

That the Trustee's petition for an order authorizing him to compromise the controversy in question should be granted.

Order

Now, Therefore, it is

Ordered that the petition of the Trustee for leave

to compromise the controversy set forth in his petition is hereby granted and said compromise is hereby approved; and it is further

Ordered that the objections of E. F. Haven, Armand J. Pihlblad, Sonnett Supply Co., and California By-Products Co., to said petition, are hereby denied and overruled; and it is further

Ordered that the Trustee be and he is hereby authorized to execute any and all necessary and proper documents and to do all things necessary to give full effect to this order approving the compromise, including without limitation the right of the Trustee to do as follows:

1. Receiving and accepting from Consolidated Casting Co., the sum of \$20,000.00.
2. Granting to and receiving from Consolidated Casting Co., mutual releases of any and all claims arising from the matters raised by the issues in the litigation now pending before this Court.
3. Receiving and accepting from Bill Lepper Motors, Inc., a statement in writing, showing a reduction of \$1,500.00 in the claim which it asserts against the Trustee, thereby making the total claim which it asserts against the Trustee the sum of \$63,444.07.
4. Paying to Bill Lepper Motors, Inc., the sum of \$63,444.07 [165] in full settlement of its claims against the Trustee.
5. Granting and receiving from Bill Lepper Motors, Inc., mutual releases of any and all claims

arising from the matters raised by the issues in the litigation now pending before this Court.

6. Receiving from Bill Lepper Motors, Inc., an assignment of the right, title and interest of Bill Lepper Motors, Inc., in and to that certain indebtedness secured by that said Deed of Trust dated April 14, 1947, and in and to said Deed of Trust itself, which said Deed of Trust was recorded May 2, 1947, in Book 24521, Page 242 Official Records of Los Angeles County, State of California, wherein Title Insurance and Trust Company is the Trustee and said Bill Lepper Motors, Inc., is the beneficiary by reason of an assignment made by the original beneficiary, to wit: Reconstruction Finance Corporation.

Dated: November 15th, 1951.

/s/ REUBEN G. HUNT,
Referee in Bankruptcy. [166]

The foregoing is approved as to form.

/s/ ROBERT H. SHUTAN,
Attorney for Bill Lepper
Motors, Inc.

/s/ JAMES T. BYRNE,
Attorney for Consolidated
Casting Co.

11/9/51 not approved—specific points of disapproval will be filed within five days.

/s/ DANIEL W. GAGE,
Attorney for California
By-Products Co.

11/9/51 not approved—specific points of disapproval will be filed within five days.

/s/ RUSSELL B. SEYMOUR,
Attorney for Sonnett Supply Co., Armand J.
Pihlblad, and E. F. Haven.

Receipt of copy acknowledged.

[Endorsed]: Filed Nov. 15, 1951, Referee. [167]

[Title of District Court and Cause.]

PETITION FOR REVIEW

To the Honorable Reuben G. Hunt, Referee in
Bankruptcy:

Come now California By-Products Corporation, by Daniel W. Gage, its attorney, and E. F. Haven, Armand J. Pihlblad and Sonnet Supply Co., by their attorney, Russell B. Seymour, and each of them and file this petition for review and respectfully represent:

I.

Your petitioners and each of them are aggrieved by Order herein of Reuben G. Hunt, Referee in Bankruptcy, dated November 15, 1951, a copy of which Order is annexed hereto and made a part hereof.

II.

The Referee erred in approving the proposed compromise referred to in the Petition of Trustee for Leave to Compromise Controversy for the reasons:

(a) That based upon the facts set forth in said [169] Trustee's petition, Bill Lepper Motors, Inc., is entitled to nothing.

(b) That the compromise is not in the best interests of the estate.

It appears from the Trustee's petition and from the statements of counsel for the Trustee made at the hearing thereon, that the obligation held by Bill Lepper Motors, Inc., was secured by a chattel mortgage against certain personal property of the bankrupt and by a trust deed against certain real property of the bankrupt. Bill Lepper Motors, Inc., was endeavoring to procure the sum of approximately \$64,944.07 from the proceeds of a sale of said real property by the Trustee in Bankruptcy, and under the compromise is to be paid the sum of \$63,444.07.

Prior to bankruptcy a purported sale was had by Bill Lepper Motors, Inc., foreclosing the chattel mortgage, which sale was fraudulently conducted, in that the bidding at said sale was stifled. The bids for the personal property being sold had reached the sum of about \$9,000.00, the particular bid being made by Messrs. Smith and Scherer at which point the agents in charge of the sale and Consolidated Casting Co., a party to the compromise, paid to the only other bidder, Messrs. Smith and Scherer, the sum of \$1,000.00 to refrain from bidding and to withdraw their existing bid. The property was then sold to Consolidated Casting Co., or its agent, for \$1,500.00, which was the amount

credited on the obligation of Bill Lepper Motors, Inc.

Under the law of the State of California, a fraudulent or improper sale under foreclosure of a chattel mortgage renders it impossible for the holder of an obligation secured thereby to obtain a deficiency. [170]

III.

The Referee erred in requiring these objecting creditors to deposit cash or a bond in the amount of \$21,500.00 as a condition precedent to denying the petition to approve the proposed compromise, said action being an abuse of discretion and without any authority in law.

IV.

The Referee erred in making said order without the Trustee or any other person having adduced any evidence in support of said petition of the Trustee.

V.

The Referee erred in refusing to permit the objecting creditors, including these petitions in review, to adduce any evidence in support of their objections, and in particular, among other things, in refusing to permit the introduction of evidence showing the fraudulent sale and stifling of bidding on the part of Bill Lepper Motors, Inc., adverted to in paragraph II above.

VI.

The Referee erred in failing to find:

(a) That the objecting creditors offered to

adduce evidence in support of their objections;
and

(b) That said offer was refused by the court.

VII.

The Referee erred in finding that the allegations in paragraphs II and IV of the objections to proposed compromise are not true, for the reason that no evidence was adduced in respect thereto and that the Referee refused to permit any evidence to be adduced.

VIII.

The Referee erred in finding that the allegations in [171] paragraphs I to VII of the Trustee's petition for leave to compromise controversy are true, for the reasons that no evidence in respect thereto was adduced by the Trustee and the Referee refused to permit the objecting creditors to adduce any evidence at all.

IX.

The Referee erred in refusing to include as part of his order that American Smelting & Refining Co., Federated Metals Division thereof, sometimes referred to as Federated Metals, an unsecured creditor of the bankrupt with a claim amounting to \$24,245.09, on which claim David Blonder appears as attorney, appeared by George Kay, its credit manager.

The objecting creditors have caused a reporter's transcript of the proceedings had at the hearing on the Trustee's petition for leave to compromise controversy to be filed with the referee.

Wherefore, petitioners for review pray that said order be reviewed by a Judge of this court; that the Referee's Order be reversed; that said Petition for Leave to Compromise Controversy be denied; and such other and further orders be made as appear proper.

DANIEL W. GAGE and

RUSSELL B. SEYMOUR,

By /s/ RUSSELL B. SEYMOUR,
Attorneys for Petitioners for Review and Objecting
Creditors. [172]

State of California,
County of Los Angeles—ss.

Mack Cottler, being by me first duly sworn, deposes and says: That he is one of the petitioners herein, namely President of California By-Products Corporation, in the above-entitled action; that he has read the foregoing Petition for Review and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

/s/ MACK COTTLER.

Subscribed and sworn to before me this 23rd day of November, 1951.

[Seal] /s/ RUSSELL B. SEYMOUR,
Notary Public in and for Said
County and State.

State of California,
County of Los Angeles—ss.

June E. Jenkins, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above-entitled action; that affiant's place of business is: 1120 Rowan Bldg., Los Angeles 13, California; that on the 23rd day of November, 1951, affiant served the within Petition for Review on the respondents in said action, by placing a true copy thereof in an envelope addressed to the attorneys for said respondents as follows:

David Blonder, Attorney at Law, 608 S. Hill St., Los Angeles 14, Calif.

Robert H. Shutan, Attorney at Law, 333 S. Beverly Dr., Beverly Hills, Calif.

James T. Byrne, Attorney at Law, 214 Rowan Bldg., Los Angeles 13, Calif.

and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California. That there is a regular communication by mail between the place of mailing and the places so addressed.

/s/ JUNE E. JENKINS.

Subscribed and sworn to before me this 23rd day of November, 1951.

[Seal] /s/ RUSSELL B. SEYMOUR,
Notary Public in and for Said
County and State. [173]

[Title of District Court and Cause.]

ORDER AUTHORIZING COMPROMISE OF
CONTROVERSY, FINDINGS OF FACT
AND CONCLUSIONS OF LAW

The Trustee herein, Frank M. Chichester, having heretofore filed his petition for an order authorizing him to compromise a certain controversy existing between said Trustee and Bill Lepper Motors, Inc., a corporation, and Consolidated Casting Co., a corporation; and said petition having duly come on for hearing before the Honorable Reuben G. Hunt, Referee in Bankruptcy on October 30, 1951, at the hour of 10:00 o'clock a.m., of which hearing at least ten (10) days notice by mail was given to the creditors herein, and

It appearing that at said hearing the Trustee was represented by his counsel, David Blonder; Bill Lepper Motors, Inc., was represented by its counsel, Robert Shutan; Consolidated Casting Co., was represented by its counsel, James T. Byrne; and American Smelting and Refining Co., an unsecured creditor of the bankrupt with a claim amounting to \$24,245.09, appeared for itself; all of the aforementioned parties appearing in support of and in favor of the Trustee's petition to compromise, [174] and

Objections to the Trustee's petition for leave to compromise controversy having been filed on October 30, 1951, by E. F. Haven, an unsecured creditor of the bankrupt in the amount of \$1,286.64, and by Armand J. Pihlblad, an unsecured creditor in the

amount of \$2,450.00, and by Sonnet Supply Co., an unsecured creditor in the amount of \$200.00, all of whom were represented at said hearing by their counsel Russell B. Seymour; and objections having also been filed on October 30, 1951, by California By-Products Corporation, an unsecured creditor of the bankrupt in the amount of \$10,349.07, which was represented at said hearing by its counsel Daniel W. Gage.

Now after a due hearing on said matter, the Court makes its findings of fact, conclusions of law and order thereon as follows:

Findings of Fact

I.

That Consolidated Casting Co., has offered to pay to the Trustee herein, and has in fact placed in the hands of the Trustee, the sum of \$20,000.00; and that Bill Lepper Motors, Inc., has agreed to reduce by the sum of \$1,500.00 its claim against the Trustee in the sum of \$64,944.07 which said claim is based upon the following figures:

To Reconstruction Finance Company.....	\$60,600.00	
Los Angeles County Taxes.....	2,657.08	
Legal services as of December, 1950.....	743.00	
Ventilators for building	618.00	
Insurance	791.20	
Interest (detailed breakdown will be shown upon request)	2,144.79	
Attorneys fees in enforcing beneficiary's rights under this trust deed.....	2,500.00	
		<hr/>
Total.....	\$70,054.07	\$70,054.07

Receipts:

Rent received from Consolidated Casting Co.	\$ 2,960.00	
Receipt from sale of 1946 Oldsmobile.....	650.00	
Receipt from sale of personal property.....	1,500.00	
	<hr/>	
	\$ 5,110.00	5,110.00
		<hr/>
		\$64,944.07

II.

That as the results of the aforementioned payment by Consolidated Casting Co., and the aforementioned reduction of claim by Bill Lepper Motors, Inc., this bankrupt estate will receive a net sum of \$21,500.00 in settlement of the controversy which is the subject of the Trustee's petition to compromise.

III.

That the Trustee, Consolidated Casting Co., Bill Lepper Motors, Inc., through their counsel, and American Smelting and Refining Co., an unsecured creditor of the bankrupt in the amount of \$24,245.09, all approved of and recommend that this Court approve of and authorize the Trustee to compromise the controversy which is the subject of the Trustee's petition herein; and all of said parties are of the opinion that it is proper and for the best interest of this bankrupt estate to accept and approve of said compromise.

IV.

That the unsecured creditors, E. F. Haven, Armand J. Pihlblad, and Sonnet Supply Co., unsecured creditors with claims totaling \$3,936.64, through their counsel, and California By-Products Co., an unsecured creditor with a claim of \$10,-

349.07, through its counsel, did object to the proposed compromise and did request this Court to deny the Trustee's petition to compromise the controversy.

V.

That this Court did offer to said objecting creditors, in lieu of a compromise of the matters set forth in the Trustee's petition, that said objecting creditors could take over the litigation which was the basis of the offer of compromise, and that the Court then would not authorize the compromise, provided however, that as a condition of such action by this Court, said objecting creditors should guarantee to the Trustee and this bankrupt [176] estate that they would receive from such litigation at least the net minimum sum of \$21,500.00. That said objecting creditors, through their respective counsel, Russell B. Seymour and Daniel W. Gage, expressly refused to make such guarantee and further expressly refused to agree to indemnify the Trustee in the sum of \$21,500.00 or in any amount whatsoever, in the event the compromise was not authorized by this Court and said Trustee was ultimately unsuccessful in prevailing in the litigation which is the basis for the Trustee's petition to compromise.

VI.

That the matters set forth in Paragraphs I and III of the objections to Proposed Compromise are included in and are part of the issues raised in the litigation which the Trustee proposes to compromise, which issues are raised by the following pleadings

on file herein; (a) Petition of Bill Lepper Motors, Inc., for order directing Trustee to pay money, (b) Answer of Frank Chichester, Trustee, in opposition to Petition of Bill Lepper Motors, Inc., for Order Directing Trustee to Pay Monies, and (c) Answer and counterclaim to petition of Bill Lepper Motors, Inc., filed by creditors California By-Products Co., E. F. Haven, Armand J. Pihlblad, and Sonnett Supply Co.

VII.

That the allegations contained in Paragraphs II and IV of the objections to proposed compromise are not true.

VIII.

That the allegations contained in Paragraphs I to VII of the Trustee's petition for leave to compromise controversy are true.

Conclusions of Law

I.

That the proposed compromise recommended by the Trustee is proper and for the best interest of this estate in bankruptcy.

II.

That the facts alleged in the objections of E. F. Haven, Armand J. Pihlblad, Sonnett Supply Co., and California By-Products [177] Co., and the evidence offered in support thereof are insufficient to warrant a denial of the Trustee's petition for an order authorizing him to compromise the contro-

versy in question, and therefore, such objections should be overruled and denied.

III.

That the Trustee's petition for an order authorizing him to compromise the controversy in question should be granted.

Order

Now, Therefore, it is

Ordered that the petition of the Trustee for leave to compromise the controversy set forth in his petition is hereby granted and said compromise is hereby approved; and it is further

Ordered that the objections of E. F. Haven, Armand J. Pihlblad, Sonnett Supply Co., and California By-Products Co., to said petition, are hereby denied and overruled; and it is further

Ordered that the Trustee be and he is hereby authorized to execute any and all necessary and proper documents and to do all things necessary to give full effect to this order approving the compromise, including without limitation the right of the Trustee to do as follows:

1. Receiving and accepting from Consolidated Casting Co., the sum of \$20,000.00.
2. Granting to and receiving from Consolidated Casting Co., mutual releases of any and all claims arising from the matters raised by the issues in the litigation now pending before this court.

3. Receiving and accepting from Bill Lepper Motors, Inc., a statement in writing, showing a reduction of \$1,500.00 in the claim which it asserts against the Trustee, thereby making the total claim which it asserts against the Trustee the sum of \$63,444.07.

4. Paying to Bill Lepper Motors, Inc., the sum of \$63,444.07 [178] in full settlement of the claims against the Trustee.

5. Granting and receiving from Bill Lepper Motors, Inc., mutual releases of any and all claims arising from the matters raised by the issues in the litigation now pending before this Court.

6. Receiving from Bill Lepper Motors, Inc., an assignment of the right, title and interest of Bill Lepper Motors, Inc., in and to that certain indebtedness secured by that said Deed of Trust dated April 14, 1947, and in and to said Deed of Trust itself, which said Deed of Trust was recorded May 2, 1947, in Book 24521, page 242, Official Records of Los Angeles County, State of California, wherein Title Insurance and Trust Company is the Trustee and said Bill Lepper Motors, Inc., is the beneficiary by reason of an assignment made by the original beneficiary, to wit: Reconstruction Finance Corporation.

Dated November 15, 1951.

/s/ REUBEN G. HUNT,

Referee in Bankruptcy. [179]

The foregoing is approved as to form.

/s/ ROBERT H. SHUTAN,
Attorney for Bill Lepper
Motors, Inc.

/s/ JAMES T. BYRNE,
Attorney for Consolidated
Casting Co.

Not approved—special points of disapproval will
be filed within (5) five days:

/s/ DANIEL W. GAGE,
Attorney for California
By-Products Co.

/s/ RUSSELL B. SEYMOUR,
Attorney for Sonnett Supply Co., Armand J. Pihl-
blad and E. F. Haven.

11/9/51. Not approved—specific points of disap-
proval will be filed within 5 days:

RUSSELL B. SEYMOUR.

[Endorsed]: Filed November 23, 1951, [180]
Referee.

[Title of District Court and Cause.]

SUPPLEMENT TO CERTIFICATE OF REFEREE ON REVIEW OF ORDER GRANTING PETITION TO COMPROMISE CONTROVERSY

To the Honorable William M. Byrne, Judge of the Above-Entitled Court

I, Benno M. Brink, one of the Referees in Bankruptcy of the above-entitled Court, do hereby, at the request of Russell B. Seymour and Daniel W. Gage, attorneys for certain parties in interest in this matter, supplement the Certificate of Referee on Review of Order Granting Petition to Compromise Controversy which I filed in this matter on February 8, 1952, by transmitting as part of the papers in the case the following records, to wit:

1. Reporter's transcript of proceedings on October 2, 1951, and October 4, 1951, filed January 3, 1952.

2. Reporter's transcript of proceedings on October 30, 1951, filed November 13, 1951. [181]

3. The following exhibits:

Petitioner's exhibit No. 1, note secured by mortgage of chattels and deed of trust, with attachments, filed October 2, 1951.

Petitioner's exhibit No. 2, deed of trust dated April 14, 1947, filed October 2, 1951.

Petitioner's exhibit No. 3, assignment of deed of trust dated October 13, 1950, filed October 2, 1951.

Petitioner's exhibit No. 4, notice of default and

election to sell under deed of trust, dated November 10, 1950, filed October 2, 1951.

Trustee's exhibit No. 1, mortgage of chattels, filed October 4, 1951.

Dated: February 15, 1952.

/s/ BENNO M. BRINK,

Referee in Bankruptcy. [182]

[Endorsed]: Filed February 15, 1952, U.S.D.C.

In the District Court of the United States for the Southern District of California Central Division

In Bankruptcy, No. 51,460-WB

In the Matter of:

SUPERIOR CASTING CO., INC., a California Corporation,

Bankrupt.

Before: The Honorable Reuben G. Hunt, Referee in Bankruptcy, Presiding.

REPORTER'S TRANSCRIPT OF HEARING
ON ORDER TO SHOW CAUSE, BILL LEP-
PER MOTORS, INC., VS. TRUSTEE,
ET AL.

Appearances:

For the Trustee:

DAVID BLONDER, ESQ.

For Certain Creditors:

DANIEL W. GAGE, ESQ., and
RUSSELL B. SEYMOUR, ESQ.

For Bill Lepper Motors, Inc.:

ROBERT H. SHUTAN, ESQ.

For Hugo E. Aleidis:

W. FLOYD COBB, ESQ. [185]

Tuesday, October 2, 1951—2 P.M.

The Referee: Superior Casting Company.

Now, I have read over the answer to the petition filed October 1, 1951. It seems to me the objection here is the same one that was made at the sale, that the price was insufficient and that these parties had information that more could be obtained but they had no offer in sight. Am I right or wrong?

Mr. Seymour: Well, that part is incidental in the whole matter.

The Referee: That is the basis of the whole answer, isn't it?

Mr. Seymour: No, that is only a part of it, your Honor.

The Referee: What other relief do you want? It says here you want the Trustee to account for the use of this property——

Mr. Seymour: No, not the Trustee.

The Referee: But I don't see any basis for that unless you can show this sale was improper, and that is the whole crux of the matter.

Mr. Seymour: I don't think so. I will try to ex-

plain what I have in mind or what I tried to relate in the answer and counterclaim.

The Referee: Well now, just a minute here. What do [186] you mean, counterclaim? You certainly are not claiming any counterclaim?

Mr. Seymour: We are on behalf of the estate.

The Referee: Well, I know, but—well, all right. Go ahead.

Mr. Blonder: I may point out that the Trustee himself has filed an answer setting out what we term certain affirmative defenses, which is a counterclaim in effect. Has the Court seen that answer?

The Referee: Is the Trustee complaining of the sale he made?

Mr. Blonder: No, the Trustee is not complaining of the sale he made, but the Trustee is contending that Mr. Bill Lepper is not entitled to the \$64,000.

The Referee: Oh, well, that is a different matter.

Mr. Blonder: No, the Trustee is not complaining about the sale he made.

The Referee: **All right.**

Mr. Seymour: As a matter of fact, your Honor, may I suggest that we are taking no steps to upset that sale. I would like to have that understood. We are not complaining that we want to have the sale set aside. We are not saying that at all, and if I could—it will take me a few minutes——

The Referee: Yes. Here is what I don't understand, what right you have got to do the Trustee's work. Isn't [187] that for the Trustee to do?

Mr. Seymour: It is for the Trustee.

The Referee: Has the Trustee refused to do it?

Mr. Seymour: Oh, we have been for a long time, shall I say,—howling our heads off.

The Referee: No, has the Trustee refused to do this?

Mr. Seymour: He hasn't done it yet.

The Referee: Then I don't see what standing you have. If the Trustee refuses to perform his duty, then you can come in and inform the Court of that and the Court can permit you, on condition, to step into the shoes of the Trustee and go ahead.

Mr. Seymour: I appreciate that. Now, your Honor, in that respect there was a document handed to your Honor at the previous hearing. I don't know whether it has been marked filed yet or hasn't been. I haven't looked in the file, but in any event that sets forth certain matters there which I think your Honor should take cognizance of and which I assume you may have when on last Friday you made an order permitting the creditors——

The Referee: I am trying to get down to the heart of this.

Mr. Seymour: I would like to have about five or six minutes to relate what I think the substance of the defenses is.

Mr. Blonder: Are they your defenses or the Trustee's? [188] Let's make that clear.

Mr. Seymour: Whether they are yours or ours, they are all for the benefit of the estate.

Mr. Blonder: I don't want Mr. Seymour to speak for the Trustee.

The Referee: The Trustee is the one that repre-

sents the estate. As the Court pointed out in the American Fidelity Corporation case, if we permitted every creditor to come in here and do the work of the Trustee we would never get anywhere.

What is the Trustee's position?

Mr. Blonder: I can explain the Trustee's position very clearly and very quickly.

The Referee: Do you want this creditor to collaborate with you?

Mr. Blonder: I don't need him, your Honor. As far as I am concerned, Mr. Seymour and Mr. Gage have done nothing but obstruct what the Trustee is attempting to do.

The Referee: That is my view of it.

Mr. Blonder: If they feel that either I or the Trustee are incompetent, I recommend that they file a petition setting forth their facts and let's have a hearing on it. I am not afraid of it, but so far all we have heard is these many allegations which it is extremely difficult to pin right down.

If the Court desires, I will now explain the Trustee's [189] position insofar as the matters before your Honor are concerned.

The Referee: Go ahead.

Mr. Blonder: Mr. Bill Lepper contends he is entitled to a certain amount of money, which contention is based upon the following:

Some time back Superior Casting Company obtained a loan from the Reconstruction Finance Corporation. That loan was secured by a trust deed on real estate and upon a chattel mortgage on certain personal property.

Subsequently it appears that Bill Lepper by assignment purchased that trust deed and chattel mortgage supported by the loan from the Reconstruction Finance Corporation, and it is Bill Lepper Motors' contention that they thereby became a secured creditor.

At a later period—this was all in 1950—Bill Lepper Motors went through a proceeding which appeared to be an attempt to foreclose upon the chattel mortgage part of that encumbrance, and as a result of that particular proceeding a foreclosure action took place out in El Segundo where the property is located.

Subsequently an involuntary petition in bankruptcy was filed against Superior Casting Company, and later on the Superior Casting Company was adjudicated a bankrupt.

During the period of time that the bankruptcy matters have been pending, Bill Lepper Motors has been attempting to [190] collect some sixty odd thousand dollars, contending that they had that amount due on the trust deed on the real property.

Various orders were made by this Court, and pursuant to those orders the real property was sold here a couple of months ago for \$75,000; and in accordance with the previous orders the Bill Lepper Motors lien, if any, was transferred from the real property to the funds obtained from the sale of the real property. Those funds are now in the hands of the Trustee.

Bill Lepper Motors filed a petition seeking to re-

cover some sixty odd thousand dollars from the Trustee.

That brings the matter up to date for the moment.

The Trustee through 21a proceedings and through other efforts, and I may state through no help at all from Mr. Seymour or Mr. Gage, just independently, developed certain evidence which he feels will enable this Court to either entirely disallow the Bill Lepper Motors claim or at least disallow part of it, and if the Court will bear with me I will submit our theory or our theories through which we contend that the petitioner's claim is unfounded.

The Referee: Before we get into that, I want to read this for the benefit of everybody. This is the case of *In Re American Fidelity Corporation, Ltd.*, decided by the late Judge Jenney of this Court some years ago. It is 40 ABR New Series 329, 28 Federal Supplement 462.

“The Trustee primarily represents the unsecured creditors, [191] and represents the secured creditors only in his capacity as a custodian of the property upon which they have a lien. He is not to be dictated to by creditors and should follow his own best judgment, even in determining what appearances he should make. It would indeed be intolerable and make impossible the orderly administration of bankrupt estates, if creditors were allowed to intervene and participate in matters of litigation of which the Trustee has charge, under the supervision and control of this Court. If the bars were let down, each creditor might conceivably appear separately to be heard; thus invoking a flood of proceedings which

would engulf the time of the Federal Court and make efficient functioning most difficult."

Then he refers to certain cases.

"It is pointed out in those cases that if the Trustee fails to do his duty, any interested creditor may make demand upon him for appropriate action, and if he fails to act promptly, the creditor may, with permission of the Court, act on behalf of the estate and in the name of the Trustee. In such instance, the Court may feel disposed to require indemnity of the creditor against costs, or may charge the costs against him if he is unsuccessful; but in any event he acts with the consent of the Court."

Now I will hear Mr. Seymour for five or six minutes he said. What have you got to say to that?

Mr. Seymour: I have got to say that, No. 1, I think [192] your Honor can almost take judicial knowledge of the fact that we have been yapping up here ever since there has been a Trustee.

The Referee: That is beside the point. I don't care whether you have been yapping or not. Coming right down to the substance, what have you got to say to this?

Mr. Seymour: The substance of the reasons why we think the creditors we represent, or as far as that goes any creditor, should take some steps in this proceeding, are set forth quite definitely in my opinion in the document I handed to your Honor at the last hearing, I think on Thursday.

The Referee: I know all that, Mr. Seymour, but do you claim here the Trustee is failing to do his duty?

Mr. Seymour: Up to date; and one more thing that is perhaps equally important if not more so is that we have set forth——

The Referee: Never mind. Answer my question. Do you claim that the Trustee——

Mr. Seymour: Yes.

The Referee: In what respect?

Mr. Seymour: In that on the 17th day of August before this Court when Referee Brink was sitting, the Trustee and his counsel were instructed to immediately bring on 21a examinations of various persons looking to the endeavor to find out the merits or lack thereof of the claims made in this proceeding. [193]

The Referee: Well now, wait a minute. Did you do that or didn't you?

Mr. Seymour: And when?

Mr. Blonder: Your Honor, these witnesses, there is probably eight of them, are all here as a result of information elicited as a result of 21a proceedings prior to today, and these witnesses are here, among others, to substantiate the Trustee's claim.

The Referee: Then you followed Referee Brink's instructions?

Mr. Blonder: I did; and furthermore——

The Referee: Then that clears that thing up. What else have you got?

Mr. Seymour: I haven't finished my remarks.

The Referee: Never mind. Have you finished this one subject?

Mr. Seymour: No.

The Referee: Then you claim they didn't conduct the examinations?

Mr. Seymour: A yes or no answer will be involved. As the petition was filed by Bill Lepper Motors to get his \$65,000, I don't have the exact date in mind but I think it was around the 10th of September,—

The Referee: Well, you are going off on another subject.

Mr. Seymour: I don't think so. [194]

The Referee: Yes, you are, too. Let's finish up this 21a examination.

Mr. Seymour: That is what I am trying to do.

The Referee: You say they didn't conduct a 21a examination?

Mr. Seymour: Until an attempt to show—

The Referee: I don't care when they did it. They did it, didn't they?

Mr. Seymour: After we got on their necks.

The Referee: That is all right. They did it, didn't they?

Mr. Seymour: He has subpoenaed certain witnesses.

The Referee: Counsel says he has taken their testimony.

Mr. Seymour: Only after we had made demand, and he hasn't completed it yet.

The Referee: Never mind, he did it.

Mr. Seymour: I can't help it, your Honor. I came up to this court—the hearing, if my memory serves me correctly, was on the 18th of September, I think it was—

The Referee: Well, I don't want to hear anything more about it. It was done. If it wasn't done that would be entirely different. I understand you did it, Mr. Blonder?

Mr. Blonder: I did, your Honor, and there was a reason for doing it at the particular time.

The Referee: I don't care about that. [195]

Mr. Seymour: There were no subpoenas——

The Referee: Never mind. They did the work. Do you deny that?

Mr. Seymour: I do.

The Referee: Then they didn't do it?

Mr. Seymour: They didn't. That is my opinion.

Mr. Blonder: We did do it. Every one of these witnesses were examined under 21a.

The Referee: He says you didn't and you say you did.

Mr. Blonder: Let the record speak for itself. It is in the record. What else can I say?

Mr. Seymour: There is just two witnesses examined.

Mr. Blonder: What?

Mr. Seymour: Or there was.

The Referee: Do you know anything about it, Mr. Chichester?

Mr. Chichester: I was present when the witnesses were examined. I can name about three or four here now.

Mr. Blonder: Mr. Keats, Mr. Laughlin. They are all here.

The Referee: Go ahead and explain your theory then.

Mr. Blonder: I would like to explain the Trustee's theory. I was wondering whether the Court before we set up our defense would be interested in hearing from the petitioner.

The Referee: That is all right.

Mr. Blonder: If I start now I may anticipate the [196] situation.

Mr. Shutan: Well, your Honor, to clear the air a little bit, this is brought before the Court, as you are well aware, on a petition by Bill Lepper Motors upon the Trustee to show cause why we should not be paid the balance which we claim to be owing on the trust deed.

Now, I don't think at this time there is any question by anybody as to the sale of the real property through this Court by the Trustee, and confirmed by the Court.

Now, so that all the parties who are interested—now, Mr. Seymour and Mr. Gage have throughout these proceedings expressed themselves as very interested. For that reason, when I brought this petition and order to show cause, I caused to be served upon both Mr. Seymour and Mr. Gage copies of the petition and order to show cause, and these copies included a paragraph requiring a written answer. The answer was a motion brought by Mr. Seymour and Mr. Gage to dismiss. I am not going to go into that because I believe the Court has already disposed of the position of those creditors other than the Trustee in bankruptcy.

Now, I would like to call Mr. Fesler of the Title Insurance & Trust Company to the stand for the

purpose of introducing the documents in question.

Mr. Blonder: Don't you want to just make a statement so I can tell the Court my position?

Mr. Shutan: Our position, our statement is simply [197] this, that we hold a promissory note secured by a deed of trust, by assignment from the Reconstruction Finance Corporation, the balance upon which, including certain charges and proper allowances, and after deducting for certain receipts which we have credited the estate with, we claim a balance due of \$64,934.07, as set forth in Exhibit A to the Bill Lepper Motors petition.

The Referee: Yes.

Mr. Shutan: Which is the subject of this hearing; and there have been certain answers filed. If I can interpret the Court's attitude on the answer filed by Mr. Seymour and Mr. Gage as not being properly before the Court, I won't take the time——

The Referee: Well, it is properly before the Court but I am just saying that I am not going to permit any creditor to come in here and assume the functions of the Trustee unless it is done in accordance with Judge Jenney's decision.

Mr. Shutan: Then there is no necessity of my answering their answer?

The Referee: I don't think there is.

Mr. Shutan: Because if there is I would like to request the Court for permission to make several oral motions.

The Referee: We don't want to clutter up the record with motions. It is clear to me. It is just

whether the Trustee has any defense to your petition.

Mr. Shutan: Then I think I should be permitted to go [198] forward and show our prima facie case, and then permit the burden of showing why the Trustee should not pay to be assumed by the Trustee.

The Referee: What is the objection to that?

Mr. Blonder: None at all. I might state this, that perhaps the Court would like to hear our theories.

The Referee: All right, let's have that.

Mr. Blonder: The Trustee has several theories set up in our answer, and if I may I would like to present them perhaps in the inverse order in which they are set up, because——

The Referee: When was that answer filed, so I can find it?

Mr. Blonder: Right after the petition, very shortly after that.

The Referee: Oh, I have it here. It was filed September 25, 1951.

Mr. Blonder: Yes, prior to the last hearing.

The Trustee's theories are as follows, very briefly:

The first theory of the Trustee is that when Bill Lepper Motors foreclosed upon their chattel mortgage they thereby waived their lien on the real estate.

That is stating the theory very simply. That is under the theory of law that when you have a debt secured by several encumbrances, by electing to foreclose upon one of them the party holding the

encumbrance thereby waives his [199] lien upon the other property.

The Referee: Well now, what authority have you got for that?

Mr. Blonder: We have—incidentally, on these various points I will ask permission of the Court to submit a more formal brief, if we can.

The Referee: I know, but give them to me now.

Mr. Blonder: All right, we have several California cases now. One is Citizens National Bank——

The Referee: Just write the citations down and I will have my secretary get them for me.

Mr. Blonder: Well, we have several, your Honor.

The Referee: That is all right. Write them down on a piece of paper and I will have my secretary get them.

Mr. Seymour: Can we have some, too?

Mr. Shutan: You mean you don't have them?

Mr. Seymour: No.

The Referee: All parties can have them. I will be the first and then I will pass them on.

Mr. Blonder: Shall I proceed, your Honor?

The Referee: No, just wait until I get them. I want to settle one thing at a time. Let me have that list now. Go ahead now.

Mr. Blonder: The next theory which the Trustee would like to present is the theory of merger.

The evidence will develop that there were two situations [200] here in which there may have been a merger. When Bill Lepper Motors acquired the trust deed and the chattel mortgage from Recon-

struction Finance Corporation, there will be certain evidence which will show that perhaps Bill Lepper Motors at that time was acting on behalf of and as the agent for Superior Casting, and therefore that there may be a merger at that point.

The Referee: We brought that out in some other hearing, didn't we?

Mr. Blonder: Well, we had a discussion on that point in the 21a examinations, and incidentally, your Honor will recall that was a 21a examination.

The Referee: Did I hear that 21a examination?

Mr. Blonder: Yes. Well, we conducted it in another room but the witness refused to answer questions.

The Referee: I remember now.

Mr. Blonder: Another point in the transaction where the question of merger arises, and it is probably a stronger one than that one, is that the purchaser, Mr. Hugo Aleidis, was acting for and on behalf of Bill Lepper Motors, and consequently when Bill Lepper Motors acquired title here, the two estates, the greater and lesser estate here, were merged, so they wiped out the foreclosure lien.

That is the other theory on which the Trustee relies to completely disallow, disallow entirely the Bill Lepper Motors claim. [201]

The Referee: Have you got authorities on that?

Mr. Blonder: Yes, your Honor.

The Referee: All right, write those down and pass them on.

Mr. Blonder: Shall I proceed, your Honor?

The Referee: Yes, go ahead. That is all right.

Mr. Blonder: Now, the Court may feel that these two theories are not proper. We think they are, but the Court may refuse to subscribe to our contention that the entire claim should be disallowed. If that does appear, the Trustee then feels and will present evidence to show that the foreclosure of the chattel mortgage was improper. In fact, it will probably develop that it can be said that the foreclosure of the chattel mortgage was probably fraudulent insofar as creditors are concerned, and the evidence will show——

The Referee: In what respect?

Mr. Blonder: I will explain. The evidence will show that at the foreclosure sale, the chattel mortgage foreclosure, there were certain people there willing to bid upon the property. It was a purported public sale; that these individuals were prepared to perhaps go as high as eight or nine thousand dollars; that Bill Lepper Motors, Inc., acting through Consolidated Casting Company, approached these individuals who were willing to bid on this property, persuaded them not to bid, paid them \$1,000 in order not to bid, [202] and consequently, having gotten rid of the competition, the property was sold to Consolidated for \$1,500; and the evidence will show that the value of that property was of the value of approximately \$20,000.

Consequently, if the Court disagrees with us in disallowing the claim completely, we at least claim an offset of at least \$20,000.

The Referee: Well, isn't there some claim that the chattel mortgage was not recorded in time and

so on, that there is some defect in the mortgage itself,—I mean as against creditors?

Mr. Blonder: No. There will be perhaps some claim that the method of foreclosure, such as posting of notice and the necessary notice as required by law is defective; but insofar as the recording of the original chattel mortgage itself, which incidentally was handled through the Reconstruction Finance Corporation, there is no evidence that that was defective.

Shall I proceed, your Honor? We have two other points.

The Referee: Yes, go ahead.

Mr. Blonder: We believe that the evidence will also show that at the foreclosure sale, or subsequently thereto, Bill Lepper Motors, Inc., through Consolidated Casting took over certain supplies and other assets not covered by the mortgage which in effect constituted a conversion. The value of that property is approximately \$5,000, and the [203] Trustee should get the benefit of that as an offset against the Bill Lepper claim.

The Referee: I see.

Mr. Blonder: Now, in the event the Court disagrees with us on all of these theories, we have still set up the point of estoppel, which point is this, very briefly; at the time the property was sold here in court the Court specifically asked Bill Lepper Motors, through Mr. Shutan, to state definitely how much was due and owing to them; and based upon the figure given to the Trustee at that time, the Trustee computed the administration costs and

other costs and computed the minimum figure he should take for the property was \$75,000. The Trustee said he could take \$75,000, relying upon the statement of Bill Lepper Motors that they had a certain amount of money coming to them. The amount they are seeking at the present time is several thousand dollars more than they stated in court at that particular time; and therefore we feel that the Court should—we feel that if the Court should disagree with all of these other theories we should at least have Bill Lepper Motors limited to the amount they stated in court, and the Trustee should also be given a credit of \$589 which the Trustee had to pay out on account of Bill Lepper Motors to close the escrow.

Those are matters which will be brought out in the evidence.

Those, very briefly, are the theories of the Trustee. [204]

The Referee: Well now, you go ahead, Mr. Shutan.

Mr. Shutan: Well, without any further statements, your Honor, except one, I would like to go forward because I feel that we have finally reached a point where we are now going to be heard; and I would just like to remind the Court that this is the fifteenth time I have appeared in this court for the purpose of being heard on this thing.

The Referee: Never mind that. Just go ahead.

Mr. Seymour: Your Honor, could I have a moment?

The Referee: Yes.

Mr. Seymour: The Trustee, I understand, has enumerated his defenses to that trust deed and to the chattel mortgage. Now, on behalf of the creditors that have filed an answer here I would like to point out two theories of law——

The Referee: I am not going to hear you on behalf of creditors unless the Trustee wants to collaborate with you. You point them out to him and if he wants to adopt them, all right, it is all right with me; but I am going to follow Judge Jenney's decision which is binding on me. The Trustee is in charge of this case and creditors are not entitled to be heard unless the Trustee fails to perform his duty. In other words, we will have nothing but a jumble here all the time.

Mr. Seymour: We did make demand upon the Court——

The Referee: Well, if you have any theories, give them to him, and if you don't think he is performing his [205] duty with respect to them, then that is entirely different. Then I will hear you **again**.

Mr. Seymour: Your Honor, there has been filed before this Court a document which if it be correct in my opinion makes an adverse interest between the counsel for the Trustee and these persons.

The Referee: All right, I don't care about your opinions. You have got to point that out by some proceeding. I am not going to permit you to come in and ball up this proceeding, Mr. Seymour, unless there is a ground for it.

Has anybody got that 182 California? I had it here a minute ago.

Well, all right. If you have any theories of any kind, or any cases, give them to the Trustee and then if you think he isn't doing his duty, call it to my attention.

Go ahead, now.

Mr. Shutan: All right, Mr. Fesler.

The Referee: How many witnesses do you have?

Mr. Shutan: I just have two.

The Referee: Have them both stand up at the same time. How many have you got, Mr. Blonder?

Mr. Blonder: Six, your Honor.

The Referee: Have them all stand up.

(All witnesses were sworn.) [206]

L. W. FESLER

called as a witness on behalf of Bill Lepper Motors, Inc., being first duly sworn, testified as follows:

Direct Examination

By Mr. Shutan:

Q. By whom are you employed, Mr. Fesler?

A. The Title Insurance & Trust Company.

Q. And what department?

A. The Trust Deed Division.

Q. And do you have custody of certain records in the Trust Deed Division of the Title Insurance & Trust Company? A. I do.

Q. Are you familiar with the file of Superior Casting Company and Bill Lepper Motors?

A. I am.

(Testimony of L. W. Fesler.)

Q. Do you have certain documents with you which you have brought in connection with that file?

A. I do.

Q. Do you have an original promissory note between Superior Casting Company and Reconstruction Finance Company dated April 14, 1947, in the face amount of \$100,000?

A. I do.

Mr. Shutan: I would like to have this—your Honor, I am going to introduce certain documents for exhibits first, and I have agreed with the Title Company that it will be [207] satisfactory to Bill Lepper Motors to make an arrangement to have these photostated and have the originals returned to the Title Company.

The Referee: I think that is all right.

Mr. Blonder: You say you are going to have photostats of them?

Mr. Shutan: That is right, and have the originals returned.

Mr. Blonder: As far as I am concerned, if you have the photostats now why don't you introduce the photostats?

Mr. Shutan: We don't have the photostats now. I have copies which I have submitted to you, and possibly by stipulation we can save some of this effort. I don't understand that the Trustee challenges the due execution of these original documents.

Mr. Blonder: I would say that the Trustee does not challenge it.

Mr. Shutan: Maybe we can make certain stipulations here.

(Testimony of L. W. Fesler.)

The Referee: Go ahead now.

Mr. Shutan: Well, I will ask this to be marked as Petitioner's Exhibit No. 1.

The Referee: All right, so received and so marked.

PETITIONER'S EXHIBIT No. 1

Los Angeles, California
April 14, 1947.

“\$100,000.00

For value received, the undersigned promises to pay to the order of Reconstruction Finance Corporation, hereinafter called 'Payee' at the Los Angeles Branch of the Federal Reserve Bank of San Francisco in the City of Los Angeles, State of California One Hundred Thousand and No/100 Dollars, (Write out amount) with interest on unpaid principal computed from the date of each advance to the undersigned at the rate of 4 per cent per annum, payment to be made in installments as follows: * * * This note is secured by mortgage of chattels and deed of trust of even date herewith.”

* * *

SUPERIOR CASTING
COMPANY, INC.,

/s/ V. W. LAUGHLIN,

/s/ FRANK D. ANDERSON,

By /s/ FRANK D. ANDERSON,
President.

(Testimony of L. W. Fesler.)

/s/ MRS. GENELL LAUGHLIN,

/s/ MARY ANDERSON,

By /s/ BEN E. EASTMAN,
Secretary-Treasurer.

[Endorsed]: Filed October 2, 1951. [208-A]

Q. (By Mr. Shutan): Mr. Fesler, do you have in your possession as part of that file an original document entitled deed of trust, dated the 14th of April, 1947, between [208] Superior Casting Company as Trustor and Title Insurance & Trust Company as Trustee, and Reconstruction Finance Corporation as Beneficiary? A. I do.

Mr. Shutan: I would like to have this document marked Petitioner's Exhibit No. 2.

The Referee: All right.

PETITIONER'S EXHIBIT No. 2

"Deed of Trust

This Deed of Trust, made this 14th day of April, 1947, between Superior Casting Company, Inc., a California Corporation, whose address is 1601 El Segundo Boulevard, El Segundo, California (hereinafter called the "Trustor"), and Title Insurance and Trust Company, a corporation of the County of Los Angeles, California, and its successors in trust (hereinafter called the "Trustee"), and Reconstruc-

(Testimony of L. W. Fesler.)

tion Finance Corporation, a corporation created and existing under the laws of the Congress of the United States, having its main office at Washington, D. C., (hereinafter called the "Beneficiary");

Witnesseth: That, whereas, the maker of the note hereinafter mentioned is indebted to the Beneficiary in the sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) and has agreed to pay the same, with interest, according to the terms of a certain promissory note, copy of which is hereto attached, marked Exhibit "A," and hereby made a part hereof. Hereafter the word "note," wherever used, shall include "notes" as required. * * *

* * * In Witness Whereof, Trustor has duly executed these presents by Frank D. Anderson, its President, attested by Ben E. Eastman, its Secretary-Treasurer, and caused its corporate seal to be hereto affixed the day and year first above written.

SUPERIOR CASTING
COMPANY, INC.,

By Frank D. Anderson,
President.

Attest: Ben E. Eastman, Secretary-Treasurer.

* * *

Recorded at request of Title Insurance & Trust Co., May 2, 1947, 8 a.m.

Copyist #1. Compared, Mame B. Beatty, County Recorder by E. Kingsley, Deputy.

[Endorsed]: Filed May 2, 1947. [209-A]

(Testimony of L. W. Fesler.)

Q. (By Mr. Shutan): Mr. Fesler, do you have in your possession as part of the aforesaid file an original document entitled "Assignment of Deed of Trust," dated October 13, 1950, in favor of Bill Lepper Motors, a California Corporation, and signed by Reconstruction Finance Corporation by Ray C. Pavey? A. I do.

Mr. Blonder: Let me see that.

Mr. Chichester: What is the date of that?

Mr. Blonder: April 13, 1950.

Mr. Shutan: I ask that this be marked Petitioner's Exhibit No. 3, if the Court please.

The Referee: All right.

PETITIONER'S EXHIBIT No. 3

Inst. No.....

Assignment of Deed of Trust

For Value Received, the undersigned hereby grants, assigns and transfers to Bill Lepper Motors, a California corporation, all beneficial interest under that certain Deed of Trust dated April 14, 1947, executed by Superior Casting Company, Inc., a California corporation, Trustor, to Title Insurance and Trust Company, a corporation, Trustee, and recorded May 2nd, 1947, in Book 24521, Page 242 of the official records in the office of the County Recorder of Los Angeles County, California;

Together With the note therein described or referred to, the money due and to become due thereon,

(Testimony of L. W. Fesler.)

with interest, and all rights accrued or to accrue under said Deed of Trust.

Dated this 13th day of October, 1950.

RECONSTRUCTION FINANCE
CORPORATION,

By /s/ RAY C. PAVEY,
Attorney-in-Fact.

State of California,
County of Los Angeles—ss.

On this 13th day of October, A.D. 1950, before me, Kay H. Backus, a Notary Public in and for the said County and State, personally appeared Ray C. Pavey, known to me to be the person whose name is subscribed to the within instrument as the Attorney-in-Fact of Reconstruction Finance Corporation, and acknowledged to me that he subscribed the name of Reconstruction Finance Corporation thereto as principal and his own name as Attorney-in-Fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] /s/ KAY H. BACKUS,
Notary Public in and for the
said County and State.

My commission expires March 10, 1954.

[Endorsed]: Filed October 2, 1951.

(Testimony of L. W. Fesler.)

Q. (By Mr. Shutan): And, Mr. Fesler, do you have in your possession as part of the aforesaid file a document entitled "Notice of Default and Election to sell under Deed of Trust," dated November 10, 1950, on behalf of Bill Lepper Motors on the notice, being to Superior Casting Company as Trustor?

A. I do. [209]

Mr. Shutan: I would like to have this marked as Petitioner's Exhibit No. 4, if the Court please.

The Court: All right, that will be done.

PETITIONER'S EXHIBIT No. 4

Trust Order No. 50-8423

Notice of Default and Election to Sell Under
Deed of Trust

Notice Is Hereby Given:

That Title Insurance and Trust Company, a corporation, is Trustee under a deed of trust dated April 14th, 1947, executed by Superior Casting Company, Inc., a corporation, as Trustor, to secure certain obligations in favor of Reconstruction Finance Corporation, a corporation, as Beneficiary, recorded May 2, 1947, in Book 24521, page 242, of Official Records in the office of the Recorder of Los Angeles County, California, describing land therein as:

Lots 296 to 300, inclusive, in Block 123 of El Segundo Tract in the City of El Segundo, as per map recorded in Book 22, pages 106 and 107 of maps in the office of the County Recorder of said county;

said obligations including one note for the sum of \$100,000.00.

That the beneficial interest under such deed and the obligations secured thereby have been transferred to the undersigned;

That a breach of, and default in, the obligations for which such deed is security has occurred in that payment has not been made of:

The installments of interest which became due on May 14, 1950, June 14, 1950, and July 14, 1950;

The installment of principal plus interest which became due on August 14, 1950, and all subsequent installments of principal plus interest;

That by reason thereof, the undersigned, present beneficiary under such deed, has executed and delivered to said Trustee a written Declaration of Default and Demand for Sale, and has deposited with said Trustee such deed and all documents evidencing obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

Dated November 10, 1950.

[Seal] BILL LEPPER MOTORS,

By /s/ WM. S. LEPPER,
President.

By /s/ VIVIAN S. LEPPER,
Secretary.

(Testimony of L. W. Fesler.)

State of California,
County of Los Angeles—ss.

On November 10, 1950, before me, the undersigned, a Notary Public in and for said County and State, personally appeared William S. Lepper, known to me to be the President, and Vivian S. Lepper, known to me to be the Secretary of the Corporation that executed the within Instrument, known to me to be the persons who executed the within Instrument on behalf of the Corporation therein named, and acknowledged to me that such Corporation executed the same.

Witness my hand and official seal.

[Seal] /s/ HAROLD J. ACKERMAN,
Notary Public in and for said
County and State.

Space Below for Recorder's Use Only

Document No. 3887. Recorded at request of Title Insurance and Trust Co., November 10, 1950, Book 34780, page 403, Official Records.

County of Los Angeles, California.

Fee \$1.90.

MAME B. BEATTY,
County Recorder,

By /s/ I. KLOTZER,
Deputy.

(Testimony of L. W. Fesler.)

This notice must be recorded by Title Insurance and Trust Company only.

When recorded mail to Title Insurance and Trust Company, Trust Deed Division, 433 S. Spring Street, Los Angeles 13, California.

Recorded November 10, 1950.

[Endorsed]: Filed October 2, 1951.

Q. (By Mr. Shutan): Mr. Fesler, do the records in your file—strike that. Can you tell us the circumstances under which those documents were placed in the possession of your company?

A. They were placed in our possession by a letter from Bill Lepper, William Lepper, on November 8, 1950, where he enclosed the deed of trust together with the assignment, and asked that notice of default be given.

Q. And was such notice of default given as per those instructions of Mr. William S. Lepper for Bill Lepper Motors?

A. Yes, the papers, notice of sale and election of default, together with declaration of default, were sent out to his attention on November 9th for execution, which he so did and returned to us on November 10th, at which time we filed the notice of default and election to sell.

Q. On November 10, 1950?

A. Yes.

(Testimony of L. W. Fesler.)

Q. You filed that with the County Recorder of Los Angeles County? A. We did.

Mr. Shutan: I have no further questions of this witness. [210]

Cross-Examination

By Mr. Blonder:

Q. Mr. Fesler, did you handle for the title Insurance & Trust Company the sale of this real property by the Trustee to Mr. Hugo Aleidis?

A. No, we did not. We merely entered the escrow.

Q. You did what?

A. We entered the escrow with our demand for our fees and expenses.

Q. Will you give us a breakdown of what your fees and expenses were that you submitted in the escrow?

A. The Trustee's fee was \$420; registered mail, \$1.32; recording of the notice of default, \$1.90; advertising the notice of sale, \$25; posting of the property, \$10; various postponements from time to time, \$20, 8 at \$2.50 each; foreclosure sale guarantee, \$105; which gives a total sum of \$583.22.

Q. The \$420 which you designated as Trustee's fee, can you explain to us what that is?

A. That fee is the Trustee's fee which is based upon, in this case, approximately $1\frac{1}{3}$ per cent of the amount of the beneficiary's claim.

Q. And is the Trustee in this particular situation the Title Insurance & Trust Company?

(Testimony of L. W. Fesler.)

A. It is.

Q. And as I understand it, the Trustee in Bankruptcy, [211] Mr. Frank Chichester, did pay to the Title Insurance & Trust Company that \$583.22; is that correct?

Mr. Shutan: I don't understand. Is this by way of cross-examination?

Mr. Blonder: Yes. Well, if you want me to put him on in chief, I don't care.

Mr. Shutan: I have no objection, your Honor, except it doesn't seem to be proper cross-examination relating to anything I brought out.

Mr. Blonder: Well, your Honor, as long as this witness is here, I explained to the Court that if the Court disallows all our theories we still have that one last thought of estoppel, and the Trustee paid out that \$583.22 which we think we are entitled to. Otherwise I can put him on as my own witness, but then he will have to come back.

The Referee: No, you don't have to do that.

Q. (By Mr. Blonder): I think the question is whether the Trustee in Bankruptcy, Mr. Frank Chichester, has paid to the Title Insurance & Trust Company the sum of \$583.22 which you mentioned?

A. We had on deposit originally from the beneficiary the sum of \$100 to apply against the ultimate expenses. The balance of that \$583.22, being \$483.22, was paid to my department by Mr. John Butler, an escrow officer of my company, through their Order 3479591.

Q. Did you put a demand in that escrow on be-

(Testimony of L. W. Fesler.)

half of [212] the Title Insurance & Trust Company for the \$583.22? A. We did.

Q. But from what you tell me you did not get the \$583.22; is that right?

A. We placed a demand—I quote here from our department to Mr. Butler in our Escrow Department—

Q. Is that your No. 508423? A. It is.

Mr. Shutan: I will stipulate you paid it if you tell me you did.

Mr. Chichester: I paid \$589.22.

Mr. Shutan: If you tell me you paid it, all right.

Mr. Blonder: Will you stipulate it was paid on behalf of Bill Lepper Motors?

Mr. Shutan: No, not on behalf of Bill Lepper Motors.

Mr. Blonder: That is the important thing. He didn't pay it for himself.

Q. (By Mr. Blonder): I will state to you, Mr. Fesler, that our records indicate the Trustee here paid \$589.22. Can you make that jibe with your figures?

A. We made a demand into the escrow by this letter here, that we placed a full reconveyance, that they could use the full reconveyance when they could comply with the instructions of Bill Lepper Motors and when they could pay to us our Trustee's fees and expenses.

Q. And your Trustee's fees and expenses you say [213] were \$583.22, is that right, which you were paid out of the escrow?

(Testimony of L. W. Fesler.)

A. We were paid out of the escrow \$586.72. I believe there was during that escrow a postponement that was made of \$2.50.

Q. That brings it up to \$589.22, then, or very close.

Mr. Shutan: It should be exact, the same company representing both pieces of paper.

Q. (By Mr. Blonder): Do you have an additional charge—I mean do you show that you obtained a——

A. There is a letter from Mr. A. A. Martin who is one of our trust officers stating that they could use the full reconveyance when they could pay the Trustee's expenses in the sum of \$586.72.

Q. At any rate, your present testimony, Mr. Fesler, is that the Title Insurance & Trust Company received the sum of \$586.72 out of the escrow as their Trustee's fees and expenses for the foreclosure proceedings that they had taken on the trust deed which you have described; is that correct?

A. We received \$586.72 as demanded, together with an additional \$2.50 postponement fee.

Q. So you got a total of \$589.22?

A. That is right.

Q. And you got that money for the things that I just mentioned in my last question; is that right, Mr. Fesler? [214]

A. That is correct.

Mr. Blonder: No further questions. That is all.

Mr. Shutan: That is all. Thank you, Mr. Fesler. May this witness be excused?

(Testimony of William S. Lepper.)

(Testimony of L. W. Fesler.)

Mr. Blonder: Yes, as far as we are concerned.

Mr. Shutan: Thanks a lot, Mr. Lepper.

The Referee: This witness doesn't have to remain, does he?

Mr. Blonder: No, your Honor, not as far as the Trustee is concerned.

WILLIAM S. LEPPER

called as a witness on behalf of Bill Lepper Motors, Inc., being first duly sworn, testified as follows:

Direct Examination

By Mr. Shutan:

Q. Mr. Lepper, your full name is William S. Lepper? A. Yes.

Q. And are you an officer of Bill Lepper Motors, Inc.? A. I am.

Q. Is that a corporation? A. It is.

Q. What is your office? A. President.

Q. Were you the president of Bill Lepper Motors, [215] Inc., during all of 1950?

A. Yes.

Q. And have you remained so to the present?

A. Yes.

Q. In your capacity as an officer of Bill Lepper Motors, Inc., are you familiar with the transaction whereby that corporation entered into a transaction with the Reconstruction Finance Corporation?

A. I am.

Q. I show you here Petitioner's Exhibit No. 1, being a promissory note of April 14, 1947, in the

(Testimony of William S. Lepper.)

face amount of \$100,000 in favor of Reconstruction Finance Corporation and signed by Superior Casting Company. Have you seen that note before?

A. I have.

Q. What was the occasion on which you first saw that note?

The Referee: Just a minute. Mr. Blonder, weren't you going to give me a list of cases on merger?

Mr. Blonder: I did, your Honor. One of those was entitled "Merger."

The Referee: Oh, excuse me. All right.

Mr. Shutan: Mr. Reporter, will you read my last question to the witness?

(Record read as follows:)

("Q. What was the occasion on which you first saw that note?") [216]

The Witness: Oh, I believe it was when I originally took over the assignment.

Q. (By Mr. Shutan): Did Bill Lepper Motors purchase this promissory note from Reconstruction Finance Corporation? A. Yes.

Q. I show you Petitioner's Exhibit No. 2, being a deed of trust dated the 14th of April, in the amount of \$100,000 or indicating that it secures a note in the amount of \$100,000, between the same parties. Have you seen that before?

A. I believe I have.

Q. Was that in connection with the same trans-

(Testimony of William S. Lepper.)

action between your corporation and Reconstruction Finance Corporation? A. Yes.

Q. And did you handle the negotiations between Bill Lepper Motors— A. Yes.

Q. And did you arrange for the purchase of this note or the purchase of this deed of trust and the promissory note and a chattel mortgage from Reconstruction Finance Corporation? A. I did.

Q. Were you informed as to the balance owing at the time of the purchase? A. Yes. [217]

Q. I show you an endorsement on the reverse side of the original promissory note, Petitioner's Exhibit 1—see if I read this correctly—"Principal amount of note unpaid as of October 13, 1950, is \$59,390 with interest from April 14, 1950. Pay to the order of William S. Lepper Motors without recourse, representation or warranty of any kind. Reconstruction Finance Corporation, by Ray C. Pavey, Assistant Manager."

Did you receive this endorsement on this note from the Reconstruction Finance Corporation?

A. Yes, sir.

Q. And did you pay to Reconstruction Finance Corporation at that time the amount necessary to cover this principal and unpaid interest?

A. I did.

Q. And what was the amount which you paid?

A. The amount that I paid was—if I remember correctly, \$60,600.

Q. And the difference between \$59,390 and \$60,600, was that the interest?

(Testimony of William S. Lepper.)

A. That was the interest.

Q. From April 14, 1950, until the date you paid?

A. Right.

Q. What was the date which you paid?

A. October 13th, I believe.

Q. 1950? [218]

A. Yes. I have the cancelled check.

Q. How did you pay, in what manner?

A. I have a check here which was dated on that date.

Q. This is a check on the Hollywood State Bank made payable to the Hollywood State Bank in the amount of \$60,600, signed by Bill Lepper Motors, Inc., by William S. Lepper, and dated 10-13-50. How did you use that check in this transaction?

A. I purchased a cashier's check with it. They asked that I bring a cashier's check.

Q. And you turned over that cashier's check to the Reconstruction Finance Corporation on or about the 13th day of October, 1950?

A. The same day.

Q. And at that time is it true you received the promissory note and mortgage and deed of trust and this assignment of deed of trust which we now identify as Petitioner's Exhibit 4; is that correct?

A. If I remember correctly, yes.

Mr. Shutan: I would like to introduce all of these—I would like to introduce the promissory note, Petitioner's Exhibit 1, into evidence.

The Referee: Haven't you already described it in the record?

(Testimony of William S. Lepper.)

Mr. Shutan: Yes, but I haven't offered it in evidence yet, your Honor. [219]

The Referee: You don't have to do that. It is in the record. I don't like to encumber the record unnecessarily. Now, if you have already brought out in the testimony the substance of that, there is no need of putting it in here. Is there anything in there that you haven't brought out that you want?

Mr. Shutan: No, sir, I believe you are correct on that.

Mr. Blonder: I may tell the Court, however, that the Court may find the actual original documents of interest in considering the Trustee's theory that there was one loan, two mortgages, and one transaction. That may be of interest to the Court, to see the original documents on that.

The Referee: All right.

Mr. Shutan: Here is the original promissory note, together with the endorsement of the assignment thereon.

Here is the original deed of trust, Petitioner's Exhibit No. 2, which I will offer in evidence.

The Referee: That is in evidence already.

Mr. Shutan: Here is the assignment of the deed of trust, Petitioner's Exhibit No. 4, which I offer in evidence.

The Referee: That is in evidence already.

Mr. Shutan: And I would like to offer as additional evidence the check of——

The Referee: These are all in evidence, Mr.

(Testimony of William S. Lepper.)

Shutan. Now you want to put the check in? [220]

Mr. Shutan: Yes, sir.

The Referee: What is the use of that?

Mr. Shutan: All right, sir.

The Referee: The others are in evidence already.

Mr. Chichester: Isn't the check in?

Mr. Shutan: No. The testimony on it is.

Then, if the Court please, I think it probably would be better for the record if this check were in the Court's hands as offered evidence.

The Referee: How would it be better for the record? The record is there. You have got it all in.

Mr. Shutan: Well, I offer it, your Honor.

The Referee: Well, I don't see any necessity for it. I am not going to encumber this record uselessly.

Mr. Shutan: All right, sir.

Q. (By Mr. Shutan): Mr. Lepper, in your petition seeking to have the Trustee required to pay over to you certain moneys which you claim due under this deed of trust, you have an exhibit to that petition in which you set forth six items for which you claim to be entitled to be reimbursed. The first item was the amount paid to Reconstruction Finance Corporation, \$60,600, which we have covered.

The second item, you claim to have paid apparently the sum of \$2,657.08, Los Angeles County taxes. Now, were these taxes of Superior Casting Company or taxes upon the real or personal property at Superior Casting Company? [221]

A. Yes.

(Testimony of William S. Lepper.)

Q. Then when were they paid?

A. I can't tell you the exact date. I have the paid tax bills here, however, and the date on which they are stamped.

Q. Well——

A. That was one that seemed to be——

The Referee: Don't forget, gentlemen, if this case goes to the Circuit Court of Appeals your transcript expense is going to be enormous if you just put in a lot of stuff like this that doesn't serve any purpose if you have it in the record already. It all has to be printed and it will cost you several hundred dollars to get all this stuff in.

Go ahead.

Q. (By Mr. Shutan): Did you pay a certain—
strike that. Did you pay certain County taxes on
behalf of Superior Casting Company on December
5, 1950? A. I did.

Q. What did you pay on that date to Los Angeles
County?

A. Well, these are the tax bills here. I don't
have a total in front of me but you have it listed
there. And then on the——

Q. Well, what does this one show, for example
(indicating)?

A. Well, this one is for equipment that is lo-
cated [222] at Mr. Gage's client's place of business.

Q. What does it show?

A. It had to be paid.

Mr. Gage: That is a conclusion of the witness.

(Testimony of William S. Lepper.)

There is no showing that there is any equipment at my client's place of business.

The Witness: This is his address on here, put it that way.

Mr. Gage: I move the witness' answer be stricken as not responsive.

The Referee: I am not going to hear from you. Motion denied. If the Trustee wants to make that, all right. You have to work through the Trustee, unless you show the Trustee isn't doing his duty.

Q. (By Mr. Shutan): Let's refer to these tax statements one at a time. This one is addressed to Superior Casting Company, 5717 South District Boulevard; is that correct?

A. That is correct.

Q. And it is in the amount of \$25.60?

A. That is correct.

Q. And Bill Lepper Motors paid that bill on December 5, 1950? A. Right.

Q. Now we take the next one. It says Superior Casting Company, 1601 El Segundo Boulevard, El Segundo, California, trade fixtures 5717 South District Boulevard. [223] A. That is correct.

Q. And it shows a total of taxes on this 1950 bill of \$113.57. I see an indication of a paid stamp here on December 5, 1950. Was that \$113.57 paid by Bill Lepper Motors, Inc.? A. It was.

Q. Now, the next bill, assessed to Superior Casting Company, 1601 El Segundo Boulevard, El Segundo, California, on real property, El Segundo, Lots 296, 297, 298, 299, and it has a number of other

(Testimony of William S. Lepper.)

—a lot of other reading to which we will not refer at the moment. This is a 1950 tax bill, and the total it indicates here is \$2,513.52. Now, is this the tax bill, as far as you know, on the real property and improvements at Superior Casting? A. It is.

Q. And did Bill Lepper Motors to your knowledge, the corporation, Bill Lepper Motors, Inc., pay this on December 5, 1950? A. It did.

Q. Were these payments—

The Referee: Do you want to see them?

Mr. Blonder: Yes, before they go in evidence, if you are going to put them in we would like to see them.

Q. (By Mr. Shutan): I show you one other tax bill, 1950, Superior Casting Company, solvent credits, in the total amount of \$4.39, marked paid June 29, 1951. Did Bill Lepper [224] Motors pay this? A. Yes.

Mr. Blonder: And what was that tax bill on, Mr. Shutan?

Mr. Shutan: It says "solvent credits." I believe that was on some bank account of Superior Casting, \$4.39.

Q. (By Mr. Shutan): Now, the next item which you list here is legal expense, legal services as of December, 1950, \$743. A. That is right.

Q. Have you paid this sum? A. I have.

Q. To whom did you pay?

A. To Mr. Ackerman, Mr. Harold Ackerman.

Q. And Mr. Ackerman represented you in connection with what matter?

(Testimony of William S. Lepper.)

A. In connection with this purchase and sale and so forth of this property.

Q. In connection with the——

A. The properties in question.

Q. I see. Now, you have another item here of \$618, ventilators for building? A. Yes.

Q. Is that ventilators which you put into the improvements at Superior Casting Company?

A. Yes, that was put into the building. [225]

Q. When were those put in?

A. Those were put in—I don't know the exact date they were put in. They were put in sometime in December, however.

Q. Of 1950? A. Yes.

Q. And at whose instance were they put in?

A. Well, mine.

Q. You mean the corporation?

A. I gave authority to put it in, yes.

Q. Those ventilators, what is the nature of those? Are they attached to the property?

A. To the building, yes. They took the fumes out of the building, mainly because the tenant on the other side of the building from the foundry was complaining about the fumes and so forth coming through.

Q. And who was the company or contractor or individual that you paid that money to?

A. It was paid to the Slauson Avenue Sheet Metal Works.

Q. The \$618? A. Yes.

Q. I see. Now, you have an item of \$791.20 for

(Testimony of William S. Lepper.)

insurance. Was that insurance which Bill Lepper Motors paid for the property of the Superior Casting Company?

A. That was insurance that came due on the property [226] and had to be renewed. I paid it.

Q. What type of insurance was that?

A. Fire insurance.

Q. Was that all fire insurance? A. Yes.

Q. And for what period was that insurance coverage?

A. Well, I think it was a three-year period. I don't know the exact date when it took place, but I am sure that the papers on the property and all would be in the hands of the Trustee. He no doubt has all that because I am sure a refund was probably made at the time of the purchase of the property.

Q. And Bill Lepper Motors paid \$791.20 to the insurance broker? A. That is right.

Q. Now, then, you also claim interest of \$2,144.79 as of the date of this exhibit? A. Right.

Q. Is that correct? A. Yes.

Q. Now, that is based upon the unpaid interest accruing on your promissory note which you took from the Reconstruction Finance Corporation from the date that interest was last paid; is that correct?

A. That is right.

Q. And that is figured in accordance with the terms [227] of the note? A. That is right.

Mr. Chichester: For the record, Mr. Shutan, is

(Testimony of William S. Lepper.)

that October 15, 1950, that you compute interest, so we will know where we are?

The Witness: Yes, October 13, 1950, if I am not mistaken, until September 13th of this year.

Mr. Shutan: No—well, yes, no interest had been paid by Superior Casting from April, 1950.

The Witness: I paid that in the purchase of the building, the purchase of the——

Mr. Shutan: However, I would say this, our original \$60,600 includes our claim of interest from April until October 13th, that is correct, so we are only claiming additional interest from October 13th.

Mr. Chichester: Until when?

Mr. Shutan: Well, we will claim it to the present, and we will ask permission of the Court to continue interest until we get payment. We don't know when that will be.

Q. (By Mr. Shutan): The last item you claim is attorney's fees in enforcing your rights under this trust deed. You claim \$2,500. You have engaged an attorney, have you not, since——

The Referee: That is where you come in.

Mr. Shutan: That is where I come in, your Honor.

Q. (By Mr. Shutan): You have engaged me as your counsel? [228] A. I have.

Q. To represent you in enforcing your rights under this deed of trust? A. Yes.

Mr. Blonder: I will stipulate to that, Mr. Shutan.

Q. (By Mr. Shutan): And you have instructed me to take all steps necessary and legal and proper

(Testimony of William S. Lepper.)

for the protection of Bill Lepper Motors, and to come into the court on such occasions as may be proper to protect your interest under this mortgage and deed of trust and make such appearances as may be necessary in that connection as your attorney? A. That is right.

Q. And it is true, is it not, that since approximately February, 1951, I have been so engaged as representing Bill Lepper Motors, the corporation, in pursuing the rights of this corporation in this court under that deed of trust?

A. That is right.

Q. And do you feel that \$2,500 is fair compensation to your counsel for the time, effort and representation which has been rendered to you to date in that representation? A. I do.

The Referee: Anything further?

Mr. Shutan: Just one second, your Honor.

I may point out to the Court, I doubt that—this may well be stipulated to by the Trustee, that we have [229] indicated credits reducing our claim as follows: That Bill Lepper Motors has received as rent from Consolidated Casting Company the sum of \$2,960.

Mr. Seymour: What period is that for?

Mr. Shutan: I can't state that now, but the Trustee and I did have those figures.

Mr. Blonder: Those figures were brought out at the hearing on the rental situation.

Mr. Shutan: Yes. I believe there is an order on

(Testimony of William S. Lepper.)

that, as a matter of fact, at the hearing on the rental order to show cause.

There was received from the sale of a 1946 Oldsmobile pursuant to the security rights under the chattel mortgage the sum of \$650, for which credit is given; and at the foreclosure sale on the chattel mortgage, from that sale there were turned over to the mortgagee, Bill Lepper Motors, the sum of \$1,500; making a total credit of \$5,110. This \$5,110 deducted from the total charges which we have claimed makes a total of \$64,944.07.

Now, your Honor, I believe it may not be improper for me to be heard for a moment at this time——

Mr. Blonder: Are you offering this as a stipulation, Mr. Shutan, this last concerning the credits?

Mr. Shutan: Yes.

Mr. Blonder: I will so stipulate if you will stipulate that Mr. Lepper would so testify, that he would testify [230] that Bill Lepper Motors, Inc., got this rent and the money from the sale of the Oldsmobile and the money from the sale of the personal property.

Mr. Shutan: Mr. Lepper, would you——

Mr. Blonder: Now, that is the stipulation that I will agree to, that if Mr. Lepper were asked these questions he would testify to these facts. I don't want to stipulate to the facts themselves.

Mr. Shutan: We will stipulate Mr. Lepper would so testify.

(Testimony of William S. Lepper.)

Mr. Blonder: Your Honor, several of the witnesses have asked, since it does appear we will not get to them——

The Referee: I was going to ask you, how much longer do you think this will take?

Mr. Blonder: I don't know how much longer Mr. Shutan will take, but Mr. Lepper's cross-examination will be quite lengthy.

The Referee: Well, we can go on Thursday all afternoon, and from 11 o'clock in the morning if you want. Supposing we do that. Is that an agreeable date?

Mr. Blonder: It is agreeable to me.

The Referee: How about you, Mr. Shutan?

Mr. Shutan: Fine. We are anxious to——

The Referee: All right, then I will continue this until next Thursday at 11 o'clock, and the witnesses and everybody can go. [231]

Mr. Shutan: I can finish my direct examination in about four more minutes.

The Referee: All right, go ahead, if it is just four more minutes.

Mr. Shutan: Will it be possible that the Court's calendar will be limited to this matter so we can really push it through?

The Referee: Well, it will be after 11 o'clock, and in the afternoon. I think it will be. I am not positive.

Mr. Blonder: I just recollect I have a creditors' meeting in the afternoon on Thursday. Could we start at 2 instead of 11?

(Testimony of William S. Lepper.)

The Referee: You have one in the morning?

Mr. Blonder: Well, let's make it at 11. I will cancel that.

The Referee: All right, go ahead.

Q. (By Mr. Shutan): Mr. Lepper, I show you a document entitled "Mortgage of Chattels," dated the 14th day of April, 1947, by Superior Casting Company as mortgagor to Reconstruction Finance Corporation, a corporation, as mortgagee, and apparently executed by those parties. Was that document part of the transaction to which we referred before whereby you purchased certain promissory notes and security papers from the Reconstruction Finance Corporation? A. That is right.

Q. In other words, this mortgage was, together with [232] the deed of trust, security for the note which we have heretofore discussed?

A. That is right.

Q. I show you a document entitled "Assignment of Mortgage of Chattels," dated the 13th day of October, 1950, signed by Reconstruction Finance Corporation by Ray C. Pavey, to Bill Lepper Motors, a California corporation. Was that document executed by Reconstruction Finance Corporation at the time of the assignment of their interest in these security papers and your purchase of the promissory note? A. Yes.

Q. By "your," I mean the Bill Lepper Motors Corporation. A. Yes.

The Referee: Where is Exhibit 3? Have you got it?

(Testimony of William S. Lepper.)

Mr. Shutan: This could well be it, your Honor. I would like to have these marked for identification.

The Referee: Which ones?

Mr. Shutan: The mortgage and the assignment of mortgage.

The Referee: Well, why is that necessary? We have to print that, too. I don't see any necessity for it.

Mr. Shutan: All right, your Honor, I will hold them.

The Referee: All right. Have you shown them to everybody?

Mr. Blonder: We have seen these before. [233]

The Referee: Anything further today?

Mr. Shutan: I have nothing. I think this would be a good time for the adjournment.

The Referee: All right, the court is adjourned.

(Whereupon an adjournment was taken until 11 o'clock a.m., Thursday, October 4, [234] 1951.)

Thursday, October 4, 1951—11 A.M.

The Referee: All right, let's go ahead in the Superior Casting Company matter.

Mr. Shutan: Your Honor, as indicated at the conclusion of the Tuesday afternoon session, I had completed the presentation of the Petitioner's case for the payment by the Trustee of the amount we claim under the deed of trust, and I rest on behalf of the Petitioner.

(Testimony of William S. Lepper.)

The Referee: All right, go ahead.

Mr. Blonder: Well, we have not completed the cross-examination of Mr. Bill Lepper.

Mr. Shutan: That is correct. I have concluded my direct examination of Mr. Lepper, let's put it that way.

The Referee: Well, you would have a right to redirect if you want to when he gets through.

Mr. Shutan: Yes.

The Referee: Go ahead, Mr. Blonder.

Mr. Blonder: Mr. Lepper, please.

WILLIAM S. LEPPER

recalled, testified further as follows:

Cross-Examination

By Mr. Blonder:

Q. Mr. Lepper, I beleive you testified that you are president of Bill Lepper Motors, a corporation; is that [235] right? A. Yes.

Q. Are you the sole stockholder of that corporation? A. No, sir.

Q. What percentage of the stock do you own?

A. Fifty per cent.

Q. Can you state generally now, Mr. Lepper, that in all of these transactions involving this trust deed and this chattel mortgage, that any of your acts were on behalf of Bill Lepper Motors, Inc., the corporation?

A. How do you mean, sir? I don't quite understand you.

(Testimony of William S. Lepper.)

Mr. Blonder: Let me ask your counsel this: Will you stipulate, Mr. Shutan, that whatever Bill Lepper did insofar as negotiating with the RFC or Superior Casting Company or in foreclosing the chattel mortgage, that he was acting on behalf of Bill Lepper Motors, Inc.?

Mr. Shutan: Why don't you put that question to the witness?

Q. (By Mr. Blonder): Can you answer that question, that you were acting on behalf of Bill Lepper Motors?

A. It would be hard to say that I was, because originally when I first went into this thing and got to talking about it, and so forth, a certain amount of talking conversation and thinking was done before the Board of [236] Directors meeting authorized me to go ahead.

Q. When was the Bill Lepper Motors formed, the corporation, do you know?

A. April 1, 1947.

Q. Therefore, it was in existence at the time you bought the trust deed and chattel mortgage?

A. Yes.

Q. And you were president of the corporation at that time?

A. That is right.

Q. Mr. Lepper, I have seen the Exhibit A in the petition which you have filed, and I would like to have you tell me about the \$650 credit which you indicate you received from the sale of a 1946 Oldsmobile. Will you tell me how you received that money?

(Testimony of William S. Lepper.)

A. Through the sale of the automobile.

Mr. Shutan: Just a minute. I object to that question unless counsel is going to attack that amount or show that——

The Referee: Your objection is overruled. Let's find out the facts. He knows.

Q. (By Mr. Blonder): Will you answer the question?

The Referee: Or he doesn't know.

The Witness: Well now, I don't know whether I am telling you what you want to——

Q. (By Mr. Blonder): You go ahead and tell me what you think you know. [237]

A. Yes. The car was sold at auction by Mr. Ackerman, my attorney, on the property in El Segundo, and bid, and that was the bid.

Q. Was the car sold at the same time the other equipment was sold out there? A. No, sir.

Q. When was the automobile sold?

A. I really don't know. I can't recall the date of it. I couldn't tell you.

Q. Do you know the date when the remaining equipment was sold out at El Eegundo?

A. I can't recall the date, no.

Q. Does the date December 7, 1950, sound familiar?

A. Yes, I think that would probably be the date, or very close to it, that the equipment was sold.

Q. Was the automobile sold before that time?

A. No, the automobile was sold at a later date.

Q. About how much longer afterwards?

(Testimony of William S. Lepper.)

A. That I really don't know.

Q. Well, was it the next day or a week later or a month later?

A. Oh, no, it was probably a month or so later.

Q. Did Mr. Ackerman handle the transaction?

A. Yes.

Q. Were you present at the time of the sale of the automobile? [238]

A. No. I wasn't in the country, in fact, at that time.

Q. Do you know who purchased the automobile.

A. Yes, I have a record of it.

Q. Well, can you tell me who purchased it? Was it purchased by Consolidated Casting Company?

A. No.

Q. Well, do you know who purchased the automobile?

A. It was purchased by a used car dealer.

Q. And how much did he pay for it, do you know?

A. \$650, if I remember correctly, was the amount.

Q. Did Mr. Ackerman tell you what he did prior to the sale, that auction sale, insofar as advertising or publishing that sale?

A. Well, he told me prior to selling it what he would have to do. I don't remember exactly what he said. There was a certain legal procedure.

Q. Mr. Ackerman was your attorney at that time; is that correct?

A. That is correct, sir.

(Testimony of William S. Lepper.)

Q. Now, Mr. Lepper, turning now to this other item which you have set forth in your petition showing a receipt from the sale of personal property of \$1,500. A. Yes.

Q. What personal property are you referring to when you mention that in your petition? [239]

A. Well, there was certain equipment that was on the property.

Q. Are you referring there to the personal property that was covered by the chattel mortgage that we have been talking about here before?

A. Yes, part of the equipment that was listed in the chattel mortgage. As was brought out in prior testimony, it was not all there, but what was there was sold.

Q. I show you here, Mr. Lepper, a document which has been handed to me by your counsel entitled "Mortgage of Chattels," dated April 14, 1947, showing Superior Casting Company as mortgagor and Reconstruction Finance Corporation as mortgagee. Attached to that document is an itemized inventory of machinery, equipment, furniture and fixtures and appliances belonging to Superior Casting Company, situated on the premises known as 1601 El Segundo Boulevard, El Segundo, California; and I will ask you to take a look particularly at that inventory which is designated Exhibit A. Have you seen that Exhibit A before, Mr. Lepper.

A. I have.

Q. And would you say, Mr. Lepper, that that is the equipment which was sold and for which you

(Testimony of William S. Lepper.)

received \$1,500 which you have indicated as a credit on our petition? A. No, not in its entirety.

Q. Well, can you go down that list of equipment and tell me what portion of that was not sold? [240]

A. No, sir, I cannot tell you what was or what was not sold. If I may, can I explain this to you a little?

Q. If you will wait just a minute I will give you the opportunity to explain it. That is the chattel mortgage which you received by way of assignment from Reconstruction Finance Corporation, is it not, Mr. Lepper? A. Yes.

Mr. Blonder: May we introduce this document in evidence, your Honor, as the Trustee's Exhibit No. 1?

The Referee: All right.

TRUSTEE'S EXHIBIT No. 1

Mortgage of Chattels

This Mortgage made and entered into this 14th day of April, 1947, by Superior Casting Company, Inc., a California corporation, of the City of El Segundo, State of California, by occupation manufacturer of aluminum casting, Mortgagor to Reconstruction Finance Corporation, a corporation created and existing under the laws of the Congress of the United States, by occupation a lending Agency of the United States Government, Mortgagee,

(Testimony of William S. Lepper.)

Witnesseth: The said Mortgagor does hereby mortgage to the said Mortgagee all of Mortgagor's personal property now or hereafter used in connection with the operation of the manufacturing business belonging to the Mortgagor and situated in and upon the premises known and described as 1601 El Segundo Boulevard, El Segundo, California, located in the City of El Segundo, County of Los Angeles, State of California, * * *

All As Security for the payment to and full compliance with the terms and provisions of that certain Promissory Note dated April 14, 1947, executed by the undersigned Mortgagor, payable to the order of Mortgagee, at the office of Federal Reserve Bank of San Francisco, in the City of Los Angeles, State of California, in lawful money of the United States in the principal sum of One Hundred Thousand and No/100 Dollars (\$100,000.00), with interest on the unpaid balance thereof, at the rate of four (4%) per cent per annum, from date, payable as to principal and interest as follows: * * *

It is also further agreed that said promissory note is also secured by a certain deed of trust to Mortgagor of even date herewith and it is hereby agreed that in case of default under said note the holder thereof may, at its sole option, and without limiting affecting any rights or remedies conferred upon it by this mortgage or said deed of trust foreclose this mortgage and/or exercise any rights and remedies conferred upon it under said deed of trust, either concurrently or in such order as it may allow and may sell or cause to be sold in such order as it

(Testimony of William S. Lepper.)

Recorded at request of Title Insurance & Trust Co., May 2, 1947, 8 a.m. Compared, Mame B. Beatty, County Recorder. Copyist No. 98.

By G. MAAG,
Deputy.

[Endorsed]: Filed October 4, 1951.

Q. (By Mr. Blonder): Did you, Mr. Lepper, ever see any list of the equipment that was sold in El Segundo for \$1,500?

A. I saw no other list than this.

Q. I show you, Mr. Lepper, a two-page document handed me by your counsel entitled "Amended Notice of Sale of Personal Property," and ask you whether you have ever seen that before, either that copy or the original of it?

A. I think I have.

Q. That Amended Notice of Sale of Personal Property which I have just shown you lists a certain group of equipment. Would you say, Mr. Lepper, that the equipment set forth in that Amended Notice is the equipment that was sold for which you obtained \$1,500?

A. No, I wouldn't say that it is. I wouldn't say that it isn't. I really don't know.

Q. Mr. Lepper, did you attend a sale on the premises [241] of Superior Casting Company in El Segundo wherein certain machinery, equipment, supplies and so on were sold at public sale?

(Testimony of William S. Lepper.)

A. I was there. I wasn't in attendance at all times, but I was there on the property at the time.

Q. That was a sale which was conducted by Mr. Ackerman, your attorney at that time; is that right?

A. That is right, sir.

Q. And that was a sale which Mr. Ackerman conducted pursuant to instructions from you to foreclose upon the chattel mortgage which is Trustee's Exhibit No. 1; is that right?

A. That is right.

Q. When did that transaction take place? I won't call it a sale. I will refer to it as a transaction, if you don't mind. When did that transaction take place? Do you recall?

A. I am not positive, but I believe the date you mentioned a while ago, December 7th, is correct.

Q. 1950? A. Yes.

Q. And what time of the day, do you recall?

A. I believe it was in the morning. I am not sure, but it seems to me it was **prior to noon**.

Q. And at that time you were out there with Superior Casting operating their business? [242]

A. No, Superior Casting was not operating at that time.

Q. They were shut down at that time?

A. Superior Casting was no longer there or represented there at that time.

Q. And when you went out there that day Mr. Ackerman was there, I presume? A. Yes.

Q. And Mr. Falkenberg from Consolidated was there? A. That is right.

(Testimony of William S. Lepper.)

Q. And Mr. Smith from Pioneer Tool was there; is that right??

A. I understand that is correct.

Q. And Mr. Scherer was there that day also from Pioneer Tool? Do you know him?

A. No, I don't know him.

Q. Do you know Mr. Vern Laughlin?

A. No, I never saw him before until someone pointed him out here in court the other day.

Q. Who else was present at that time?

A. There was a Mr. Saither, who was on the property. I don't think he was actually present at the sale. There was a group in the office, but it wasn't at the sale.

Q. How many other people were there around there that you didn't know personally?

A. Well, I don't know. There was a man there that [243] had something to do with conducting the thing, I think by the name of Lorenzo.

Q. Frank Lorenzi? A. I think so.

Q. Was he actually present during this transaction when the property was sold? A. Yes.

Mr. Shutan: Your Honor, I have just discussed with counsel whether this was really proper cross-examination or more properly an affirmative defense to be put on by the Trustee. As a practical matter, it won't make too much difference, but I think that properly this is not cross-examination.

The Referee: I know, but as long as he can put it on some other way, let him go ahead.

Mr. Shutan: All right, sir.

(Testimony of William S. Lepper.)

Q. (By Mr. Blonder): Do you know Mr. Emmett Falkenberg? A. I do.

Q. He is the president of Consolidated Casting, is he not? A. I am not sure.

Q. Is he an officer of Consolidated Casting?

A. Yes.

Q. And Consolidated Casting is a corporation; is that right? A. Yes, as I understand. [244]

Q. Do you own any stock in Consolidated Casting Company? A. I do not.

Q. Did you ever? A. No.

Q. Were you ever an officer or director or stockholder in Consolidated Casting Company?

A. I have never been a stockholder.

Q. Have you ever loaned Consolidated Casting Company any money? A. I have.

Q. Did you say that you were never an officer, director or stockholder of Consolidated Casting?

A. Phrase that again, please.

Q. Were you ever an officer of Consolidated Casting Company? A. No.

Q. Were you ever a director of Consolidated Casting Company?

A. I really don't know, to tell you the truth, whether I have been or not.

Q. Well, do you know what a director of a corporation is, Mr. Lepper? A. Yes.

Q. I will ask you one more question. Did you ever own any stock in Consolidated Casting Company? [245] A. No.

Q. And are you telling me now that you don't

(Testimony of William S. Lepper.)

know whether you ever were or were not a director of Consolidated Casting Company?

A. That is right. Would you like me to explain that to you? A. Yes.

A. Well, I have loaned Consolidated Casting Company some money, and it was the understanding at the time I loaned them some money that I was to be able to have some representation on the thing as to what disposition was to be made of this money, I mean as far as how it was to be used; and there was—at that particular time there was a statement made by Mr. Falkenberg, I believe, that possibly I would like to be a director on there. If I wished to, it would be all right with him. What actually has transpired I have never inquired or never bothered about, and I really don't know. I am just trying to be truthful. I don't want to say I am or I am not because I really don't know. It may sound like a rather funny thing, but it really didn't mean enough one way or another, and I don't know.

Q. When you conducted certain transactions with Consolidated Casting Company, what individual in that company did you deal with, Mr. Falkenberg? A. Mr. Falkenberg.

Q. Did you deal with anyone else in the company? [246] A. No.

Q. So your dealings or transactions or whatever they were with Consolidated Casting Company were always through Mr. Falkenberg?

A. That is right.

(Testimony of William S. Lepper.)

Q. Did you ever have any negotiations or transactions with Mr. Saither?

A. Well, at the time that Consolidated Casting Casting Company was formed—you asked me a while ago if Mr. Falkenberg was president, and I told you I didn't know.

Q. Yes.

A. Because when it was originally formed, I believe,—I don't know this, but I believe Mr. Saither was president and as president I am pretty sure that he signed a note on the money I loaned. I mean, if you call that a transaction.

Q. Yes.

A. I mean, I just bring that up.

Mr. Shutan: If the Court please, I don't want in any way to obstruct the full information reaching the Court in this thing, and I don't want anything I say to be interpreted that way; but this is an action for money owing on a deed of trust, and unless counsel can tie in his questioning to the case put on by the petitioner, I hereby object to this line of questions.

The Referee: All right, your objection is overruled and you may make a motion to strike it later if you don't [247] tie it in.

Mr. Shutan: Thank you, sir.

Mr. Blonder: Would the Court be interested in hearing my position as to what I am attempting to prove?

The Referee: Oh, no, go ahead. You can explain it to Mr. Shutan if you want to.

(Testimony of William S. Lepper.)

Mr. Blonder: O.K., during the noon recess I will do that.

Q. (By Mr. Blonder): Do you know when Consolidated Casting Corporation was formed as a corporation, approximately? If you don't know, you, of course, can say so.

A. I don't know the exact date. It is hard for me to remember dates.

Q. Well, do you remember that it was formed on or about December 7, 1950?

A. No, it was formed prior to that time.

Q. Was it shortly prior to the time that you held this sale in El Segundo, would you say?

A. Well, that is a difficult question. What do you mean by "shortly"? I know it was formed—

Q. Within a month or two before that?

A. Somethink like that, I would say.

Q. Would you say it was formed about the time you acquired the trust deed and mortgage from the RFC? A. No.

Q. In other words, Consolidated Casting Company was [248] formed before they purchased the equipment in El Segundo; is that right?

A. Yes.

Q. Was Consolidated Casting Company in business at any other place before they opened a place of business in El Segundo?

A. Not to my knowledge. I don't think so.

Q. Would you say, Mr. Lepper, that Consolidated Casting Company was formed for the specific purpose of purchasing the equipment and other

(Testimony of William S. Lepper.)

assets out in El Segundo that formerly belonged to Superior Casting? A. No.

Q. Did you ever have any discussions with Mr. Falkenberg—

Mr. Shutan: I object to that and move to strike the answer on the ground that the question assumes that this witness knows.

The Referee: No, if he doesn't know let him say so.

Q. (By Mr. Blonder): Did you ever have any discussions with Mr. Emmett Falkenberg relative to forming a corporation for the purpose of taking over any of the equipment or other assets of Superior Casting Company?

The Referee: That only calls for a yes or no answer.

The Witness: Will you ask that again, please?

(Record read as follows:

“Q. Did you ever have any discussions with Mr. Emmett [249] Falkenberg relative to forming a corporation for the purpose of taking over any of the equipment or other assets of Superior Casting Company?”)

The Witness: Well, no, not in that respect.

Q. (By Mr. Blonder): When was the first time that you loaned any money to Consolidated Casting Company?

A. I really don't know the exact date.

Q. Was it before December 7, 1950?

A. I really can't recall.

(Testimony of William S. Lepper.)

Q. Well, to the best of your knowledge—let me withdraw that. How much money did you loan to Consolidated Casting Company?

A. You mean in December of—

Q. No, I mean at all times, from the time you first knew Consolidated Casting Company existed to the present time, how much money have you loaned them? A. \$50,000.

Q. That \$50,000 that you say you have loaned to Consolidated Casting Company, did you give it to them in a lump sum? A. No.

Q. Did you give it to them in a series of payments?

A. Well, I gave them a couple of checks, if that is what you mean.

Q. Did you give that \$50,000 to Consolidated Casting Company in the form of several [250] checks? A. Yes.

Q. And what was it, two checks that you gave them? A. Three I think in all.

Q. The total of those three checks amounted to \$50,000? A. That is right.

Q. When was the first check that you gave them? A. I can't recall.

Q. How much was the first check for?

A. \$20,000, if I am not mistaken.

Q. How much was the second check for?

A. The second check was for \$20,000, and the third one was for ten.

Q. Do you have those cancelled checks?

A. I have.

(Testimony of William S. Lepper.)

Q. In your possession?

A. Well, I don't have them here. Actually, they are in storage along with a lot of other papers. You see, I went away in December and put all my household furniture and business records and everything in storage.

Q. Mr. Lepper, will you bring those checks into court as this proceeding continues? We will probably be here this afternoon and so on.

A. It would not be possible to do it today.

Mr. Shutan: I object to that. We have had no notice to produce anything. [251]

The Referee: What is the objection?

Mr. Shutan: Counsel has made a demand on this witness to bring in certain records. He says during the course of this proceeding. This is the first information we have had they desired them.

The Referee: What is wrong with bringing them in if you have got them?

Mr. Shutan: Mr. Lepper was trying to explain these things were put in storage in December before he went to Europe, and he asked for them this afternoon.

The Witness: I don't even know where they are.

The Referee: Then get them in the next hearing.

Q. (By Mr. Blonder): You will get them in the next hearing?

A. If I can find them I will be very happy to.

Q. What I am trying to get at is the time element, and if you will think a few moments I think you can probably help me out.

(Testimony of William S. Lepper.)

A. I can help you out from the stubs. I have my check book out here.

Q. It doesn't have to be the exact date.

A. May I bring my check book instead of the checks, because I have that?

The Referee: Yes, certainly, you bring whatever you have.

Q. (By Mr. Blonder): Bring the stubs and then bring the [252] checks later.

A. There is no point in bringing the stubs and then bringing the checks later. I will wait and bring the checks.

Q. Did Consolidated give you any security for that loan? A. They gave me a note.

Q. Did you get a chattel mortgage on any equipment or other property? A. No.

Q. Did you get a trust deed or mortgage on any real property? A. No.

Q. Did you get an assignment of any accounts receivable or any other tangible assets?

A. No.

Q. In other words, your testimony now is that all you got is a promissory note for the \$50,000, without any security; is that right?

A. That is right.

Q. When is that note payable?

A. On demand.

Q. Do you have that \$50,000 note with you at the present time? A. I do not.

Q. Will you bring that note also with you at the next hearing, Mr. Lepper? [253]

(Testimony of William S. Lepper.)

A. If I can find it I will be very happy to.

Q. Well, are you telling us now that probably you cannot find that note?

A. It is very possible.

Q. What do you think has happened to it?

A. It is not lost, I can assure you, but have you ever moved and put things in storage?

Q. Yes, I have, but if somebody owed me a \$50,000 note I could certainly find it, I would know where it was.

A. I can find it. It is just a matter of time.

Q. Now, getting back to this particular transaction which took place in El Segundo wherein certain property was sold, as I understand it, there were several bidders out there bidding on this equipment, machinery and personal property; is that correct? A. I am not sure, sir.

Q. Were you there when the sale was conducted?

A. Not during the time the actual sale—part of it, but not all of it. I was on the property, but not at the actual spot.

Q. Now, at the time that sale took place did you on behalf of Bill Lepper Motors, Inc., have possession of that property? A. Yes.

Q. Mr. Ackerman conducted the sale; is that correct? A. That is correct. [254]

Q. What did Mr. Ackerman say? Tell me what happened?

A. Frankly, I don't know. I wasn't right at the point of the sale during the exact time the sale took place.

(Testimony of William S. Lepper.)

Q. Where were you?

A. I was in the front office of the building.

Q. Well, on that particular day when that sale was scheduled you went out to El Segundo, the premises of Superior Casting Company?

A. I went out there.

Q. Is that right? A. That is right.

Q. Suppose you tell me everything that happened, insofar as you know, and everything that happened, insofar as you are concerned, from the moment you walked into the premises.

A. All right. Well, this Mr. Ackerman and this fellow Lorenzi, or whatever his name is, were both there, and I don't know, there was a conversation. There were a couple or three people milling around, and——

Mr. Shutan: I am going to ask counsel to reframe the question to be more specific instead of a shotgun question like that. This is cross-examination.

Mr. Blonder: That is why I think that my line of questioning can be quite broad. I am trying to find out what Mr. Lepper knows about what occurred that day. So far he [255] tells me he knows nothing. Let him start from the beginning and tell me what happened.

The Referee: You can test his memory. Objection overruled.

Mr. Blonder: Go ahead, Mr. Lepper.

The Referee: Tell us what you remember about it.

The Witness: Well, the only thing I can tell you

(Testimony of William S. Lepper.)

is what I remember; and to the best of my knowledge, I remember that Mr. Ackerman read from this paper. I was there at that time, but I didn't pay too terrible much attention to it. There was a certain amount of legal formality which I don't understand; and he also made the statement, I do remember that because I was anxious to see that the thing was properly handled from that point of view, that all of the equipment that was on this list was not all being sold because it wasn't all there, and the only thing being sold in the way of equipment was what could be seen physically on the property. About that time I was called to the front office on a phone call. I went in there and was in there I don't know how long, and when I came back out the sale of this thing was still going on and—or as I remember the picture later, frankly,—

Q. (By Mr. Blonder): Well, let me interrupt you. Tell me actually what was happening rather than saying the sale was going on.

Mr. Shutan: Confine your remarks to what you observed, [256] and not what came to you later.

The Witness: Well, when I came back outside Mr. Ackerman was asking for a bid. Mr. Falkenberg said \$1,500. Mr. Ackerman asked for other bids, and he finally said, "Sold to Mr. Falkenberg."

Q. (By Mr. Blonder): Did he say, "Sold to Mr. Falkenberg," or "Sold to Consolidated Casting"?

A. I don't remember, to tell you the truth,

(Testimony of William S. Lepper.)

whether he said Falkenberg or Consolidated or just what.

Q. Now, you saw this Mr. Smith and Mr. Scherer there that day; is that right?

A. There were other people there. I don't remember them. They have been pointed out to me in court, but I don't remember them, frankly.

Q. You know Mr. Smith, don't you?

A. He has been pointed out to me in court.

Q. Did you see him there that day?

A. I don't recall.

Q. What about Mr. Scherer, do you recall him?

A. Him I don't know.

Q. After Mr. Ackerman said, "Sold to Mr. Falkenberg," what happened after that?

A. There wasn't anything happened.

Q. Did Mr. Ackerman get any money from Consolidated Casting or Mr. Falkenberg?

A. I don't really remember what happened because I went back in the office then.

Q. Well, you show on your petition that you received \$1,500.

A. Yes.

Q. How did you get that, in cash or check?

A. If I recall it was a check.

Q. And from whom did you receive the check?

A. Consolidated Casting.

Q. Did you receive it right that day?

A. I don't remember.

Q. You don't remember when you got the check; is that right?

A. No. May I explain this was about the 7th of

(Testimony of William S. Lepper.)

the month. I had just negotiated a sale of my house, putting everything into storage, and I left on the 12th of the month for Europe. I had a lot of things on my mind and I left some things for Mr. Ackerman to take care of, and I didn't pay too much attention to all the little details. I mean, I had a lot of things on my mind and I don't remember all the details.

Q. Mr. Lepper, if there is anything you don't understand or you don't remember, just say so. We all know those things can happen. Now, do you know what happened to the \$1,500 after you got it, the \$1,500 check?

A. I know it was deposited in my account.

Q. When you say it was deposited in your [258] account, you mean the Bill Lepper Motors, Inc., account?

A. Bill Lepper Motors, Inc., that is right. I don't remember the exact depositing of it. I made a lot of deposits in the last few years.

Q. Now, when was the last time you were on the premises on El Segundo Boulevard previously occupied by Superior Casting Company?

Mr. Shutan: I object to that as completely irrelevant to anything before the Court.

Mr. Blonder: I will tell you what I am attempting to prove, Mr. Shutan. I want to prove that the particular equipment which was sold on this particular day is still in the possession of Consolidated Casting Company.

The Referee: Well, why not find out?

(Testimony of William S. Lepper.)

Mr. Shutan: How is that relevant?

Mr. Blonder: It is relevant to prove the value of the property. It may be necessary to actually go out—

The Referee: Then ask the witness where it is if he knows.

Mr. Blonder: All right, let me withdraw that question and I will reframe it.

Q. (By Mr. Blonder): You say the equipment that was sold that particular day to Consolidated Casting Company, you saw it, is that right?

A. Yes.

Q. Is that equipment still in the possession [259] of Consolidated Casting Company?

A. As far as I know. I would have no reason to know whether it was or wasn't.

Q. But as far as you know it has not been moved out of the premises; is that right?

A. That is right. I haven't heard that it has been.

Q. Prior to the time of this sale, did you have any discussions with Mr. Falkenberg about Consolidated Casting purchasing this equipment?

A. Well, yes, he said he was going to bid on it.

Q. Where did you have that discussion with Mr. Falkenberg?

A. Oh, I don't remember. I mean when I say that I presume that I must have. There was sure something mentioned about it, it was only natural, but I don't remember any conversation exactly, but I am—

(Testimony of William S. Lepper.)

Mr. Shutan: Mr. Lepper, if you don't recall you are entitled to say you don't recall.

The Witness: I don't recall.

Mr. Shutan: Your only obligation is to answer these questions to the best of your ability.

Mr. Blonder: If the Court please, it is 10 minutes after 12. Does the Court desire to continue?

The Referee: Whatever you want to do is all right with me.

Mr. Blonder: This will be rather lengthy. [260] I can continue on as long as your Honor desires.

The Referee: All right, then let's go on until 12:30 then.

Mr. Blonder: All right, your Honor.

Q. (By Mr. Blonder): Did you have more than one discussion with Mr. Falkenberg about Consolidated Casting purchasing this equipment?

A. I don't recall.

Q. At the time that you had your discussions with Mr. Falkenberg, did you indicate to him that you would do everything that you could to see to it that he could purchase this equipment as cheaply as possible?

Mr. Shutan: I object to that question. There is no foundation for that at all.

The Referee: Objection overruled. He can answer the question yes or no.

Q. (By Mr. Blonder): Answer the question, Mr. Lepper. A. No.

Q. Mr. Lepper, you have testified that you

(Testimony of William S. Lepper.)

loaned this \$50,000 to Consolidated prior to the sale, I believe; is that correct?

A. No, I didn't testify to that. I testified that I don't remember just when it was.

Q. Did you loan them any portion of the \$50,000 before this sale, can you recall?

A. I can't remember. [261]

Q. Is it possible that you may have?

A. It is possible, yes.

Q. At that time Consolidated Casting Company was not in business, is that right, prior to the sale of this equipment?

A. They were in business.

Mr. Shutan: These questions have all been asked and answered to the best of the witness' ability here.

Mr. Blonder: Let him testify.

The Witness: They were in business.

Q. (By Mr. Blonder): Where were they operating?

A. 1601 El Segundo Boulevard, El Segundo, California.

Q. Consolidated was there prior to the time of the sale of this equipment; is that right?

A. That is right.

Q. Did they have any physical assets there?

A. I assume that they did.

Q. What was the business of Consolidated Casting Company out on El Segundo Boulevard?

A. Aluminum castings.

(Testimony of William S. Lepper.)

Q. Were they using the equipment which was sold at this sale that you told us about?

A. Yes.

Q. Did they have any other equipment that they had brought in themselves in their operations on El Segundo Boulevard? [262]

A. I don't know.

Q. Mr. Lepper, it has been brought out in hearings here in this court that there were other bidders on this property other than Consolidated Casting Company. Did you see any other people bidding at that sale?

A. I didn't see anyone bidding, no.

Q. Did Mr. Falkenberg tell you that there were other bidders prepared to bid on the property?

Mr. Shutan: I object to that.

Mr. Blonder: This is cross-examination.

The Referee: Just ask him what Mr. Falkenberg told him on that subject. You can answer that.

The Witness: I don't recall any conversation about it.

The Referee: You can answer that just yes or no, if you remember it.

Q. (By Mr. Blonder): Now, isn't it true—he said he didn't remember, your Honor.

Isn't it true, Mr. Lepper, that there were other people bidding on that property, that they did bid higher than \$1,500, and that they were approached either by yourself or Mr. Falkenberg and requested not to bid?

A. No, not by me.

Q. Isn't it true, Mr. Lepper, that other bidders on the property were actually paid a certain amount

(Testimony of William S. Lepper.)

of money for the purpose of not bidding on this property?

Mr. Shutan: Well, I object to that question, although [263] I think we all should know if such a thing happened.

The Referee: Mr. Shutan, wait a minute. This is cross-examination. We are entitled to a broad field of examination. If he doesn't know about it he can say so. If he does know something about it we are entitled to know what he does know.

Mr. Blonder: Mr. Reporter, will you read the question?

(Record read as follows:

“Q. Isn't it true, Mr. Lepper, that other bidders on the property were actually paid a certain amount of money for the purpose of not bidding on this property?”)

The Witness: I have heard that, since this thing here, but——

Mr. Shutan: Mr. Lepper, you may confine your answer to what you know of your own knowledge.

The Witness: I didn't know about it, no.

The Referee: That would be hearsay, then.

Q. (By Mr. Blonder): From whom did you hear that such a transaction took place?

A. Well, I didn't hear that it took place, but I heard that there was testimony concerning it, from Mr. Shutan.

The Referee: That question is all right.

(Testimony of William S. Lepper.)

The Witness: My counsel told me that there was testimony about it here in this courtroom.

The Referee: What?

The Witness: My counsel told me that there was testimony about it here in this courtroom. [264]

The Referee: Well, do you know who gave the testimony?

Mr. Blonder: Yes, we know, your Honor. It is in the record.

The Referee: Then don't badger him about it, if you know.

Q. (By Mr. Blonder): Was that the first time you ever heard about that transaction?

A. The first time I heard about this money that was supposed to be paid?

Q. That is right. A. No.

Q. You had heard about that before; is that right? A. That is right.

Q. And who told you about it before?

A. I don't recall exactly.

Q. Well, when did you hear about it before?

A. That I don't remember, either.

Q. Well, approximately? Last month, last year, six months ago. Give us some idea.

A. Well, I heard about it a few days ago.

Q. And from whom?

A. I don't remember. I have talked to several people, and I don't recall.

Q. Did you ever hear about that incident happening before it was brought out in court a week or two ago? [265]

(Testimony of William S. Lepper.)

A. I heard rumors to the effect, yes.

Q. Well, from whom did you hear the rumors?

A. I don't remember.

Q. Did Mr. Falkenberg ever tell you that?

A. No, he didn't.

Q. Did Mr. Scherer ever tell you that?

A. I have never met Mr. Scherer.

Q. Or Mr. Smith, did Mr. Smith ever tell you that?

A. I don't know Mr. Smith.

Mr. Blonder: May I at this time ask Mr. Daniel Gage if—may I ask Mr. Gage for either one of the two affidavits which I am informed he has, being affidavits of a Mr. Scherer and a Mr. Smith concerning that particular transaction about which I am asking the witness questions now?

Mr. Gage: There has been no demand made upon me until now. I will produce the affidavits at 2 o'clock.

The Referee: What did you say?

Mr. Gage: I will produce the affidavits at 2 o'clock.

The Referee: Demand is made upon you now, sir. Have you got them?

Mr. Gage: I said I would bring them in at 2 o'clock. They are in my office.

The Referee: That is O.K.

Mr. Blonder: May we then have a recess until 2 o'clock, your Honor?

The Referee: That is all right. [266]

(Discussion off the record.)

The Referee: Then we will continue it until 2 o'clock p.m. [267]

Thursday, October 4, 1951—2 P.M.

The Referee: This case will be continued four weeks. Now, that will be—well, say Thursday, November 1st, at 10 a.m., for the hearing on the petition, and all witnesses will return on that date unless otherwise notified.

Mr. Blonder: Should I call off the names of the witnesses, your Honor?

The Referee: Yes, you might do that.

Mr. Blonder: Mr. Falkenberg, Mr. Laughlin, Mr. Keats, Mr. Smith, Mr. Scherer, Mr. Ackerman, Mr. John Gray.

The Referee: You may not have to come back, gentlemen, but come back unless they notify you in the meantime. Maybe all differences will be adjusted by that time and you won't have to come back. Don't misunderstand me about that. You are to come back unless you get notification from Mr. Blonder or Mr. Chichester that you don't need to come back. That is the petition to compromise.

Mr. Blonder: No, we will bring the petition on before.

The Referee: Make it 11 o'clock. That will be better.

Mr. Blonder: That 11 o'clock date on November 1st—

Mr. Chichester: Your Honor, is it the idea of the Court that the petition to compromise will be heard at 10 o'clock that day?

The Referee: No, it will be heard here in the meantime. We can start at 11 and go the rest of the day if you [268] have to go ahead.

Mr. Blonder: That will be November 1st at 11 o'clock, gentlemen, unless you are notified to the contrary. [269]

Certificate

I, H. A. Singeltary, hereby certify that on the 2nd and 4th days of October, 1951, I attended and reported, as official court reporter, the proceedings in the above-entitled and numbered matter before the Honorable Reuben G. Hunt, Referee in Bankruptcy, in said Matter, and that the foregoing is a true and correct transcript of the proceedings had therein on said dates, and that said transcript is a true and correct transcription of my stenographic notes thereof.

Dated at Los Angeles, California, this 28th day of December, 1951.

/s/ H. A. SINGELTARY,
Official Court Reporter.

[Endorsed]: Filed January 3, 1952, [270]
Referee.

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[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT OF PROCEEDINGS ON HEARING ON PETITION TO COMPROMISE CONTROVERSY

Appearances:

For the Trustee:

DAVID BLONDER, ESQ.

For Bill Lepper Motors:

ROBERT H. SHUTAN, ESQ.

For Certain Creditors:

RUSSELL B. SEYMOUR, ESQ.

For Certain Creditors:

DANIEL W. GAGE, ESQ.

For Consolidated Casting Co.:

JAMES T. BYRNE, ESQ. [272]

Tuesday, October 30, 1951—10:30 A.M.

The Referee: We will now take up the Superior Casting Company case.

Mr. Blonder: Your Honor, this morning we have a hearing on the offer of compromise. Is there objection, Mr. Seymour and Mr. Gage?

Mr. Seymour: There is. We have filed objections to it, and have served a copy on Mr. Blonder.

Mr. Blonder: The copy was served on me in the courtroom this morning.

The Referee: I have gone over this. I am in favor of the compromise. But if this creditor wants to assume the **burden of contesting the matter, it** can, and can take its chances. I am going to rule in favor of the compromise.

Mr. Seymour: I appreciate your Honor's views. But it happens that we are all out of money and we have nothing left to put up a bond with.

Mr. Blonder: The same position was taken when these same gentlemen attempted to prevent the sale of the real estate for \$75,000. At that time they said they didn't want it sold, because of certain things, and we told them that if they would come up with an offer of a certain amount in cash it might be different, and they came up with the same answer, "Fresh out of money." So we sold the property for \$75,000, and now they are complaining about the offer to [273] compromise. I would like to see something to back up these continuous complaints.

The Referee: I am not stating what I will do. Mr. Shutan, are you in favor of or against the compromise?

Mr. Shutan: I am in favor of the compromise.

Mr. Blonder: I think there are some creditors in the courtroom also that the Court may be interested in hearing from.

Mr. George B. Kay: The American Smelting & Refining Company, approximately \$25,000.

The Referee: You have the same privilege, if you want to guarantee that amount to the estate or to take over the burden of litigating this matter.

Mr. Kay: I would be in favor of it, but I don't want to take it over.

The Referee: I have seen too many offers of this kind that came to nothing, because of a situation

like this, unless some creditor wanted to take the burden over.

Mr. Blonder: Are there any other creditors in the courtroom? (Pause.) Evidently not.

Mr. Seymour: I want your Honor to understand everything that is going to take place. We are going to review this matter.

The Referee: You don't have much chance, because all the decisions are against you.

Mr. Seymour: May I make a short argument, then, that [274] may have some weight?

The Referee: No use making an argument. If you can take over the burden here, all right. Otherwise I am going to approve this compromise.

Mr. Seymour: Even though, your Honor, on the facts stated in the petition, I can demonstrate to your Honor that they are not entitled to do it? Will your Honor listen to me?

The Referee: I can't help it. We have got the offer.

Mr. Seymour: Even if I can show your Honor that we can get, under the law, under the facts admitted——

The Referee: I don't know what might come out of the litigation. Nobody knows. The outcome of a lawsuit can never be demonstrated in advance.

Mr. Seymour: Let me make about a two or three-minute speech here. I like to make speeches.

The Referee: All right.

Mr. Seymour: The evidence that has been partially adduced before this Court is to the effect that there was a fraud in connection with the sale of

this chattel mortgage. I don't know whether your Honor happened to be in the courtroom when that evidence was taken.

The Referee: There is no evidence of fraud yet.

Mr. Seymour: Your Honor hasn't been here and heard it all.

The Referee: Just answer my question.

Mr. Seymour: There has been evidence of substantial [275] fraud here.

The Referee: Before me?

Mr. Seymour: The Court started it, and then there was a 21-A examination, and whether or not Mr. Blonder pointed the situation out to you I don't know, but I would like to point it out to you.

Mr. Blonder: You said sometime previously that there were no 21-A examinations. Are you stating now that there were?

Mr. Seymour: I am stating they were partially conducted. The point is that there is evidence before this Court under that 21-A examination, and Mr. Blonder knows it.

The Referee: I know all that. But do we want to lose this offer?

Mr. Seymour: I am going on this assumption, that there is evidence——

The Referee: I don't care about that. Suppose we follow your course, and in the end we lose. Do you mean to say that we will then lose the benefit of this compromise offer? That is what I want to know. There is a prior case on this.

Mr. Seymour: I don't think so.

The Referee: Now, stick to that. You have an opportunity to guarantee this thing and take it over.

Mr. Seymour: May I ask your Honor if your Honor is familiar with the fact that there was a bid of \$9,000 made [276] for this chattel mortgage property, and that the bidders, to wit, Consolidated Casting, and the agents in charge at that sale, paid one bidder \$1,000 not to make a bid? Is your Honor familiar with that?

Mr. Blonder: I stated to your Honor in my opening statement that that would be the evidence we would adduce. All the facts upon which the Trustee based his objection to the claim of \$64,000 were certainly adduced before your Honor on the trial. After the morning session they came through with this offer. The offer is \$20,000 in cash, plus \$1,500 to be deducted from the amount of the Bill Lepper claim, so, in effect, the estate is gaining \$21,500. That is the net result of the offered compromise.

The Referee: You have your remedy here.

Mr. Seymour: I would like to have your Honor read the case of Metheney vs. Davis, 107 Cal. App., page 137, which holds that where there has been fraud in connection with a chattel mortgage, that the holder of that obligation is not entitled to recover.

The Referee: Well, then, you take it over.

Mr. Seymour: I don't have \$21,000.

The Referee: Then the petition is granted. Objection overruled.

Mr. Blonder: May the record show that there

was a creditor in the court approving it, the creditor being American Smelting & Refining Company, Federated Metals [277] Division of American Smelting & Refining Company, whose claim is approximately \$25,000? That is represented by Mr. Kay. This creditor is an unsecured creditor.

Mr. Seymour: May the record also show that demand was made upon the Trustee that objections be brought to that very same claim that counsel is talking about.

The Referee: All right.

Mr. Blonder: Your Honor, with reference to the demand this morning, would it be appropriate at this time for the Trustee to make a motion to strike that demand, for the reason that it does not state any facts sufficient to constitute the basis for the claim of Mr. Seymour is asserting?

The Referee: I would rather you would get a formal order.

Mr. Blonder: These documents were filed this morning, and this is the first time we have seen them.

Mr. Seymour: I would like to have findings.

Mr. Blonder: I will submit them for approval, and if they are not good enough, I am sure somebody can correct them. I am wondering if, in view of the fact that Mr. Seymour threatens review, if it might not be advisable to take testimony in the matter.

The Referee: You can do whatever you want to.

Mr. Seymour: May we offer testimony, too, your Honor?

The Referee: I am not deciding this now. I am giving the objecting creditor or creditors the right to take this [278] litigation over, provided they will guarantee this estate in the end that it will protect the estate, so that, in the end, the estate will get this much.

Mr. Blonder: I believe we should include that particular phase of it in the findings, then. I will make it part of the order, that if the petitioning creditors want to take over the litigation——

The Referee: The order can provide that they were given that privilege, but that they refused to take it over.

Mr. Blonder: May I ask at the present time if Mr. Gage, who represents certain other objecting creditors, whether or not he, on behalf of his clients, also refuses this offer which is being given to him by the Court?

Mr. Gage: That is correct.

Mr. Blonder: May the record show that Mr. Gage also refuses the offer suggested by the Court?

The Referee: Mr. Seymour and Mr. Gage object.

Mr. Seymour: I will take it over if we don't have to put up \$21,000.

The Referee: Well, you don't want to put up anything. You want the other creditors to gamble with you, and they don't want to. Of course, you wouldn't have to put up cash. You could put up a bond.

Mr. Seymour: I couldn't get a 25-cent bond.

Mr. Blonder: The California By-Products is

certainly substantial. They can put up the [279] bond.

The Referee: If you want to try to get a bond, I will give you opportunity.

Mr. Seymour: I wouldn't risk \$21,000 on it, because I don't have it. If I had to pay, I couldn't pay it.

The Referee: If you want time to take it up with the creditors and see if they will do that—

Mr. Seymour: We are not going to put up any bond.

The Referee: Do you want time?

Mr. Seymour: I don't want time for that, no, your Honor.

Mr. Blonder: May I ask Mr. Byrne, who represents Consolidated Casting Company, to make the statement that he has \$21,000 in cash or cashier's check?

Mr. Byrne: I have here, your Honor, my check, which is certified, in the sum of \$20,000, made out to Frank Chichester. That is on the condition that this is a final settlement.

The Referee: It has got to be in final settlement.

Mr. Shutan: I understand that Mr. Seymour filed certain papers in connection with objections to this hearing, and intends to file other papers. I would like the record to show my request and demand on Mr. Seymour that I receive copies of all pleadings and papers.

Mr. Seymour: May the record show that it is a pleasure.

Mr. Byrne: May the record show that I am

handing [280] Mr. Chichester this check, No. 446, and it is written on my client's account, James T. Byrne's client's account, and certified by the Bank of America, in the sum of \$20,000.

Mr. Chichester: The Trustee acknowledges its receipt. I will deposit it in my Trustee Account and hold it.

The Referee: It will be clear that I am not deciding this matter at all, other than to grant this petition, unless some creditor or creditors are willing to guarantee this amount to the estate and take over the burden of the litigation.

Mr. Byrne: I understand this acceptance this morning makes it a final acceptance?

The Referee: It does, by the Trustee. I don't think you need to have much fear of that, because this Court and other courts have universally held that that is subject to the sound discretion of the Referee and will not be reversed except in case of plain abuse of discretion. If anybody can find abuse of discretion in the orders I make in that respect, they are welcome. Anything else on that?

Mr. Blonder: In this Superior Casting case, we have three 21-A examinations, in which I would like to examine Mr. Gage, Mr. Seymour, and Mr. John Gray.

(21-A examination of Mr. Gage omitted.)

The Referee: Mr. Blonder, Mr. Seymour and Mr. Gage have filed a demand upon the Trustee that actions be brought and objections to the proposed compromise, in which they [281] accuse you of neglect.

Mr. Blonder: That is the second time.

The Referee: Do you want to make a statement in regard to that?

Mr. Blonder: I would like to make a motion to strike that demand.

The Referee: No, I wouldn't grant that. But do you want the record to show what you have done in these matters, and why?

Mr. Blonder: In the first place, if there is anything we haven't done, it is because Mr. Seymour and Mr. Gage have deliberately refused to disclose information to us, and that is the reason we have had to bring 21-A proceedings to get information. We have examined, under 21-A proceedings, I believe, all the witnesses mentioned in that demand. If there is any witness that we didn't examine, the Trustee was still satisfied that he had sufficient information and could develop sufficient testimony on the hearing on objections on the Bill Lepper claim. The purpose of filing the objections to the Bill Lepper claim was to attempt to knock out completely their claim of \$64,000. And that is what I understand Gage and Seymour want us to still do over again. We started that litigation, and now we are attempting to compromise. We think this is a reasonable compromise and suggest that it be accepted.

Insofar as the previous statement which they filed is concerned, accusing us of neglect, there was no neglect. [282] What Mr. Seymour and Mr. Gage didn't understand was that I was deliberately waiting for Bill Lepper to file his petition seeking the

\$64,000, before I started by proceeding. As soon as they filed that petition, we conducted all these examinations sufficiently to, in my opinion, give us enough ammunition to conduct the lawsuit. Now the offer of compromise has come up, and they don't like it. They filed a demand to start litigation, and I state that, if all the facts they set forth in their demand are true, there is still evidently no cause of action. So that is the story, your Honor. We have done all we can.

The Referee: Have you examined this petition? Do you want to make a statement about it? Read that.

Mr. Blonder: I haven't examined that thoroughly.

The Referee: Well, you had better do that.

Mr. Blonder: All right, your Honor.

The Referee: We will recess for 10 minutes.

(Short recess.)

Mr. Blonder: Two documents were filed. One is objections to the proposed compromise, and one is a demand upon the Trustee that actions be brought. Does the Court desire a statement on both documents?

The Referee: Whatever you want to say.

Mr. Blonder: With respect to the purpose of the proposed compromise, the Court has read the verified petition of the Trustee. The only thing I want to say with [283] reference to the objection is that the accusation has been made that the Trustee failed to examine fully, or, in some cases, at all, various witnesses who have knowledge of the asserted fraud

on the part of Bill Lepper Motors, Inc., and, of these witnesses, I want to state for the record that I personally examined or interviewed Mr. Les Scherer, Mr. Walter Smith, Mr. Falkenberg, the president of Consolidated Casting Company, Mr. Harold J. Ackerman, Mr. George Kay and Mr. John Gray. There were also other witnesses who were examined under 21-a, or interviewed by myself, and those witnesses gave me sufficient information to institute the proceeding which is the basis for the petition to compromise. I did not either interview or examine Mr. Norton Sather, Mr. William Cullen or Mr. Homer Lewis. If it had been necessary those three individuals would have been subpoenaed for the hearing before the Court.

The Referee: Why didn't you examine them?

Mr. Blonder: With reference to Mr. Norton Sather, we did not discover who he was or where he was until the last 21-A proceedings, when I examined Mr. Laughlin. That was a few days before the hearing before the Court, and we knew who he was at that time. He was, we understood, working for Consolidated Casting, and he could have been gotten here within a few hours, which we would have done, if the proceeding had required it.

With reference to Mr. William Cullen and Mr. Homer [284] Lewis, I still don't know who they are. And I will state to the Court that I had several interviews with Mr. Seymour and Mr. Gage and attempted to get information concerning this

matter, and at no time did they ever mention to me the name of William Cullen or Homer Lewis.

But, be that as it may, your Honor, and going on now to this demand upon the Trustee that he institute certain actions, an analysis of this demand shows that what Messrs. Gage and Seymour are seeking is that some sort of action be instituted confirming all these transactions which are at issue in the matter which is now before the Court, and which is the basis for the petition to compromise. Sufficient facts have been set up by the Trustee in his answers and affirmative defenses to the claim of Bill Lepper Motors for \$64,000. We set up, and are prepared to prove, those facts. The Court might not have agreed with our theory of the law. And it was in that particular proceeding that the petition to compromise has now been brought. The Trustee has already instituted the very proceedings which Gage and Seymour say now we should do but they say we haven't done it quite the way they want us to do it. They probably want us to institute primary proceedings. That was one of the reasons why I wanted to wait until Bill Lepper instituted a proceeding in this court to get the \$64,000. In that way, by merely attacking his claim and setting up the affirmative defenses, we had the matter at issue before this Court on a [285] summary proceeding.

I will state to the Court also that I plan to file a written answer to this demand, so that the record will be clear on the point. And with reference to the pending proceedings now, I have one witness

to examine, Mr. John Gray, which will take only about five minutes. I want to find out what he knows about this situation.

Mr. Seymour: The hearing on the Lepper matter was continued to November 1st, at which time various witnesses were requested to return again unless they were notified to the contrary.

Mr. Blonder: I intend to do that.

Mr. Seymour: Mr. Gage and I would like to examine Messrs. Smith and Scherer at a 21-A examination, and I think it would be better that the Trustee would merely not notify them not to return on November 1st, and give us an opportunity to examine them.

Mr. Blonder: They were subpoenaed as witnesses.

The Referee: Have they been examined?

Mr. Blonder: They have not been examined, because we were just getting to that. I will be glad to examine them, if these creditors want that done, and I will call them and tell them that they have to be here then.

Mr. Seymour: Mr. Falkenberg, of Consolidated Casting, is another witness.

Mr. Byrne: The reason we offered the compromise was [286] because we——

The Referee: You need not go into that. If the creditors think the witnesses should be examined, and if you have no objection, go ahead.

Mr. Blonder: I have no objection. I know that, as far as Mr. Scherer and Mr. Smith are concerned, they will definitely testify as to the impropriety and

the fraudulent acts which occurred at the chattel mortgage foreclosure sale. Mr. Gage, I understand, has a letter from them to that effect. And so we are going to use them as witnesses in that particular hearing, and they are still under subpoena. I have no objection to examining them.

Mr. Byrne: On the offer of compromise, one of the prime motives of my offering this compromise, one of my prime purposes, was to stop the personalities. That is the reason I made the offer.

The Referee: Well, they can certainly examine these witnesses.

Mr. Byrne: But the matter has been compromised; they either accept my compromise, or they do not.

Mr. Blonder: May we ask Mr. Seymour and Mr. Gage what they think the Trustee may accomplish by examining these three witnesses? I disclosed what I know those witnesses will testify to. I disclosed what I will examine them about. I disclosed what I think they know and what they will testify to. I think it would be most appropriate for Mr. Seymour and [287] Mr. Gage to advise the Trustee, since he wants us to examine them, to tell us what they want to find out from these three individuals. I think it would be interesting to know that fact.

Mr. Seymour: You stated that it was your opinion that their testimony would be that the sale on the chattel mortgage was, in essence, fraudulent.

Mr. Blonder: Right.

Mr. Seymour: That is the purpose of my examination. If you will stipulate that that is what their

testimony would be, I will dispense with the examination.

Mr. Blonder: Mr. Seymour, or Mr. Gage, has letters in his possession—I want the record to show that Mr. Gage has letters in his possession, by Scherer and Smith, which state what they will testify to. He never showed them to me when I had him on 21-A proceedings several weeks ago, and he didn't tell me anything about it. If you want to know what they are going to testify to, let's see what they say. They have got it in writing, your Honor.

Mr. Seymour: I want to have their testimony as a part of the record.

The Referee: That is denied. I am not trying any issue raised on these charges. I am simply holding that this is a substantial offer, and I am going to approve it, unless you want to take over the litigation and guarantee that the estate will get that amount. [288]

Mr. Gage: Is it my understanding, your Honor, from what you said, that you are not concerned with whether there was fraud there or not?

The Referee: It isn't a question of my concern. It is a question of whether you want to take over the litigation or whether you don't.

Mr. Gage: That is your order?

The Referee: That is my order. That is not denying you any right whatever, provided you guarantee that the estate will get this money.

Mr. Blonder: May I proceed with the examination of Mr. Gray, your Honor?

The Referee: All right.

Mr. Blonder: May I ask you, for the record, Mr. Seymour, do you know anything about Superior Casting Company of Texas which would enable the Trustee to get together any assets or funds for the benefit of the present bankrupt estate?

Mr. Seymour: I know nothing more than what Mr. Gage testified to. What I do know I learned from him.

Mr. Blonder: All right. I am satisfied, for the record. Now, Mr. Gray.

(Examination of the witness John D. Gray omitted.)

Mr. Seymour: Do I understand, your Honor that these witnesses Scherer and Smith will be examined, the witnesses I mentioned before, Scherer and Smith, that we will have an [289] opportunity to examine them on the first?

The Referee: If you can uncover any assets, yes. Otherwise it is a waste of time. But I am not going into the merits of the thing.

Mr. Seymour: We are desirous of knowing their testimony and having it in the record. We do have an affidavit as to what they would say, and would like to have it in the record—that is Scherer and Smith and Falkenberg.

Mr. Chichester: That is in connection with the compromise?

The Referee: I am not concerned——

Mr. Seymour: But we are——

The Referee: Sit down. I am not concerned with

all these charges. Unless you can take over the litigation and guarantee that money to the estate, it would shock the conscience of any equity judge to do otherwise.

Mr. Seymour: For the record, I request that we be permitted to examine Mr. Walter Smith, one Les Scherer—I don't know Falkenberg's first name.

Mr. Blonder: William.

Mr. Seymour: And William Falkenberg, for the purpose of demonstrating by their evidence that the sale under the chattel mortgage was fraudulent.

The Referee: Maybe it is. I don't know.

Mr. Seymour: Well, but I want to get that in the record, and I request an opportunity to examine them for the [290] purpose of putting their evidence on the record.

Mr. Blonder: I have no objection, but it may hold up—I don't want that to hold up the compromise.

Mr. Chichester: I am afraid the compromise might be [291] lost. I have a \$20,000 certified check in my possession, that I want to deposit to the account of the bankrupt estate. One of the reasons for making that offer in compromise was to terminate further litigation and further examination of witnesses, and a possible strain on friendship between individuals in this matter. That is one of the reasons why we have a substantial offer. If that offer is going to be jeopardized by trying to keep open these apparent wounds and bringing the whole matter back to the surface again, we can very well lose the compromise.

The Referee: I agree with that.

Mr. Blonder: May I suggest that we go ahead with the compromise, and your Honor rule, and if at any later date, we have to examine these witnesses, they are still open for 21-A examination.

Mr. Gage: I take it, then, that this Court, for purposes of this compromise, is not interested as to whether there was any fraud in the sale or not.

The Referee: I am going to give you a chance to go into it in the proper way, if you want to.

Mr. Gage: Just by bringing it up under 21-A your Honor?

Mr. Seymour: Just by putting up \$21,000, your Honor?

The Referee: Well, I can't help that. I am not going to let you use the process of this court and ball this thing up so that we will get nothing in the end. [292]

Mr. Gage: Has the Court any objection to Mr. Seymour and myself examining those two witnesses under 21-A tomorrow, before the date set for the compromise to be heard, November 1st?

Mr. Blonder: That November 1st date is just a continuation of the litigation itself.

The Referee: If it is anything that would jeopardize the compromise, we won't do it.

Mr. Chichester: I think that is right, your Honor.

Mr. Seymour: In other words, we may not do that, we may not examine any of these witnesses?

The Referee: That's right, upon the ground solely, that this compromise is intended to eliminate

all that. The offer is very substantial. And if you think you can do better by an assumption of the litigation, you can have the opportunity to take it over. You have refused to do so.

Mr. Seymour: I refused on one ground only, that I didn't have \$21,000.

The Referee: We can't jeopardize the creditors by doing it. [293]

Certificate

I, C. W. McClain, hereby certify that on the 30th day of October, 1951, I attended and reported, as official court reporter, the proceedings in the above-entitled and numbered matter before the Honorable Reuben G. Hunt, Referee in Bankruptcy, in said Matter, and that the foregoing is a true and correct transcript of the proceedings had therein on said date, and that said transcript is a true and correct transcription of my stenographic notes thereof.

Dated at Los Angeles, California, this the 13th day of November, 1951.

/s/ C. W. McCLAIN,
Official Court Reporter.

[Endorsed]: Filed November 13, 1951, [294]
Referee.

[Title of District Court and Cause.]

MINUTES OF THE COURT APRIL 4, 1952

Present: The Hon. Peirson M. Hall,
District Judge.

Nature of Proceedings:

Ex Parte

Submitted on March 10, 1952, on Petition of California By-Products Corp., E. F. Haven, Armand J. Pihlblad and Sonnet Supply Co., for Review of Order of Referee approving compromise.

Ruling

The Order of the Referee approving compromise is affirmed.

EDMUND L. SMITH,
Clerk.

By S. W. STACEY,
Deputy Clerk. [322]

In the District Court of the United States, Southern
District of California, Central Division

No. 51460—PH

In the Matter of:

SUPERIOR CASTING COMPANY, INC., a Cali-
fornia Corporation,

Bankrupt.

ORDER AFFIRMING ORDER
OF REFEREE

In the above-entitled action, the Petitioners on Review, California By-Products Corp., a California Corporation; E. F. Haven, Armand J. Pihlblad, and Sonnett Supply Co., having heretofore filed their petition for review of the order of the Honorable Rueben G. Hunt, Referee in Bankruptcy, dated November 15, 1951, and

The said Petitioner on Review, California By-Products Corp., having appeared by its attorney, Daniel W. Gage; and the Petitioners on Review, E. F. Haven, Armand J. Pihlblad and Sonnet Supply Co., having appeared by their attorney, Russell B. Seymour; and the Trustee herein, Frank M. Chichester, having appeared by his attorneys, Ehrlich & Blonder, by David Blonder; and

The parties hereto having filed their written memorandums on review; and the parties hereto having submitted said matter to this Court on March 10, 1952; and the matter having been duly considered by the Court;

It is hereby Ordered, Adjudged and Decreed:

That the order of the Honorable Rueben G. Hunt, Referee [323] in Bankruptcy, dated November 15, 1951, which order did approve a compromise by the Trustee of certain matters, is hereby affirmed.

Dated April 16, 1952.

/s/ PEIRSON M. HALL,
District Judge.

The above Order is approved as to form.
April . . . , 1952.

.....,
Attorney for California By-Products Corp., a California Corporation.

April 9, 1952.

/s/ RUSSELL B. SEYMOUR,
Attorney for E. F. Haven, Armand J. Pihlblad, and Sonnet Supply Co.

Receipt of Copy acknowledged.

Docketed and entered April 16, 1952.

[Endorsed]: Filed April 16, 1952. [324]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that California By-Products Corporation, E. F. Haven, Armand J. Pihlblad and Sonnet Supply Co. and each of them

hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Minute Order of the Court herein, made and entered April 4, 1952, and from the formal Order, made and entered April 16, 1952, each of which orders approved and confirmed order of Reuben G. Hunt, Referee in Bankruptcy, dated November 15, 1951, approving petition of the Trustee in Bankruptcy for leave to compromise controversy purportedly existing between said Trustee in Bankruptcy and Bill Lepper Motors, Inc., and Consolidated Casting Co.

DANIEL W. GAGE, and
RUSSELL B. SEYMOUR,

By /s/ DANIEL W. GAGE,
Attorneys for Said
Appellants.

[Endorsed]: Filed May 2, 1952. [325]

[Title of District Court and Cause.]

UNDERTAKING FOR COSTS ON APPEAL

Know All Men by These Presents, that the Fidelity and Deposit Company of Maryland, a corporation organized and existing under the laws of the State of Maryland, and duly licensed to transact business in the State of California, is held and firmly bound unto Frank Chichester, Trustee in Bankruptcy for Superior Casting Company, Inc.,

a California Corporation, Bankrupt, in the above-entitled matter, in the penal sum of Two Hundred Fifty and No/100 Dollars (\$250.00) to be paid to said Frank Chichester, Trustee in Bankruptcy for Superior Casting Company, Inc., a California Corporation, its successors, assigns, or legal representatives, for which payment well and truly to be made, the Fidelity and Deposit Company of Maryland binds itself, its successors and assigns, firmly by these presents.

The Condition of the Above Obligation Is Such, that

Whereas, the California By-Products Corporation, E. F. Haven, Armand J. Pihlblad, and Sonnet Supply Co. are about to take an appeal to the United States Court of Appeals for the Ninth Circuit from an appeal from minute order entered April 4, 1952, and from formal order entered April 16, 1952, each of which approved and confirmed order of Reuben G. Hunt, Referee in Bankruptcy, dated November 15, 1951, [326] approving petition of the Trustee in Bankruptcy for leave to compromise controversy existing between said Trustee in Bankruptcy and Bill Lepper Motors, Inc., and Consolidated Casting Co., by the United States District Court for the Southern District of California, Central Division, in the above-entitled action.

Now, Therefore, if the above-named Appellants, California By-Products Corporation, E. F. Haven, Armand J. Pihlblad, and Sonnet Supply Co., shall prosecute said appeal to effect and answer all costs

may be adjudged against him if the appeal is dismissed, or the judgment affirmed, or such costs as the Appellate Court may award if the judgment is modified, then this obligation shall be void; otherwise to remain in full force and effect.

It Is Hereby Agreed by the Surety that in case of default or contumacy on the part of the Principal or Surety, the Court may, upon notice to them of not less than ten days, proceed summarily and render judgment against them, or either of them, in accordance with their obligation and award execution thereon.

Signed, sealed and dated this 2nd day of May, 1952.

[Seal]

FIDELITY AND DEPOSIT
COMPANY OF MARYLAND.

By /s/ ROBERT HECHT,
Attorney in Fact.

Examined and recommended for approval as provided in Rule 8.

/s/ RUSSELL B. SEYMOUR,
Attorney.

Approved this day of, 1952.

.....
Judge. [327]

State of California,
County of Los Angeles—ss.

On this 2nd day of May, 1952, before me, S. M. Smith, a Notary Public, in and for the said County

of Los Angeles, State of California, residing therein duly commissioned and sworn, personally appeared Robert Hecht, known to me to be the Attorney-in-Fact of the Fidelity and Deposit Company of Maryland, the Corporation that executed the within instrument, and acknowledged to me that he subscribed the name of the Fidelity and Deposit Company of Maryland thereto and his own name as Attorney-in-Fact.

[Seal] /s/ S. M. SMITH,
Notary Public in and for the County of Los Angeles
State of California.

My Commission expires Feb. 18, 1954.

[Endorsed]: Filed May 2, 1952. [137-a]

[Title of District Court and Cause.]

PETITION AND AFFIDAVIT FOR ORDER
EXTENDING TIME FOR FILING RECORD AND DOCKETING APPEAL AND
ORDER

State of California,
County of Los Angeles—ss.

Russell B. Seymour, being sworn, says: That he is one of the attorneys for California By-Product Corporation, et al., appellants, in respect to order of the Court made under dates of April 4, 1952, and April 16, 1952, in connection with which a notice of appeal was filed on May 2, 1952. That designa

tion of orders of record on appeal has been filed by the appellants and the time for filing a counter-designation expires on or about June 11, 1952. That the time for filing the record and docketing the appeal expires on June 11, 1952. Affiant is advised by the Clerk of the Court that in view of the nature of the record additional time for filing the record and docketing the appeal will be required. [337]

Wherefore, it is prayed that an order be made extending the time for filing the record and docketing the appeal herein to and including July 1, 1952.

/s/ RUSSELL B. SEYMOUR.

Subscribed and sworn to before me this 9th day of June, 1952.

[Seal] /s/ EDITH CETTO,

Notary Public in and for
Said County and State.

It Is Ordered that the time for filing of record on appeal with the United States Court of Appeals for the Ninth Circuit and for docketing therein the appeal taken by the above-named appellants by notice of appeal filed May 2, 1952, be and hereby is extended to July 1, 1952, pursuant to Rule 73g of the Federal Rules of Civil Procedure.

Dated this 9th day of June, 1952.

/s/ PEIRSON M. HALL,

Judge of the District Court
of the United States.

[Endorsed]: Filed June 9, 1952. [338]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 338, inclusive, contain the original Creditors' Petition; Order of General Reference; Adjudication of Bankruptcy and Order to File Schedules; Bonds of Trustee; Certificate of Referee on Review of Order Granting Petition to Compromise Controversy and the thirty-two documents certified therewith; Supplement to Certificate of Referee on Review of Order Granting Petition to Compromise Controversy and the seven documents certified therewith; Order Affirming Order of Referee; Notice of Appeal; Undertaking for Costs on Appeal; Statement of Points; Designation of Record on Appeal and Petition and Order Extending Time to File Record and Docket Appeal and a full, true and correct copy of Minutes of the Court for April 4, 1952, which constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$4.00 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 23rd day of June, A.D. 1952.

[Seal]

EDMUND L. SMITH,
Clerk.

By /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 13440. United States Court of Appeals for the Ninth Circuit. California By-Products Corporation, E. F. Haven, Armand J. Pihlblad and Sonnet Supply Co., Appellants, vs. Frank M. Chichester, Trustee in Bankruptcy of the Estate of Superior Casting Company, Inc., Bankrupt; Bill Lepper Motors, Inc., and Consolidated Casting Co., Appellees. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed June 24, 1952.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 13440

CALIFORNIA BY-PRODUCTS CORPORATION,
E. F. HAVEN, ARMAND J. PIHL
BLAD and SONNET SUPPLY CO.,

Appellants,

vs.

FRANK M. CHICHESTER, as Trustee of the
Estate of Superior Casting Company, Inc., a
California Corporation, Bankrupt,

Appellee.

STATEMENT OF POINTS

(Rule 75d)

The District Court erred in confirming the order of the Referee for each of the following reasons:

1. No evidence in support of the Trustee's petition was adduced by or on behalf of the Trustee.

2. The Referee refused to permit the objecting creditors to adduce any evidence in support of their objections to said petition for leave to compromise controversy.

3. No controversy existed between the Trustee and Consolidated Casting Co., and Bill Lepper Motors, Inc.

4. The Referee was not entitled to consider as evidence, at the hearing on the petition for leave to compromise controversy, any of the numerous docu-

ments listed on pages 2 to 7 of the Referee's Certificate, none of said documents having been offered in evidence at the hearing.

5. Where a chattel mortgage foreclosure sale was fraudulently conducted, Bill Lepper Motors, Inc., lost its right to obtain any deficiency on its single obligation secured both by a Chattel Mortgage and a Deed of Trust on the property of the bankrupt.

6. The Referee abused his discretion in requiring the objecting creditors to deposit a guarantee of \$21,500.00 before he, the Referee, would consider the objections to the petition of the Trustee.

Dated this 15th day of July, 1952.

DANIEL W. GAGE, and

RUSSELL B. SEYMOUR,

By /s/ RUSSELL B. SEYMOUR,
Attorneys for Appellants.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 16, 1952.

